92D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 92-238

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

JUNE 2, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

MINORITY AND SEPARATE VIEWS

[To accompany H.R. 1746]

The Committee on Education and Labor, to whom was referred the bill (H.R. 1746) to further promote equal employment opportunities for American workers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF LEGISLATION

The basic purpose of H.R. 1746 is to grant the Equal Employment Opportunity Commission authority to issue, through well established procedures, judicially enforceable cease and desist orders. The bill would transfer the functions and responsibilities of the Office of Federal Contract Compliance (now in the Department of Labor—pursuant to Executive Order 11246) to the Equal Employment Opportunity Commission; and transfer the Attorney General's authority in practice or pattern discrimination suits to the Equal Employment Opportunity Commission. The bill would broaden jurisdictional coverage by deleting the existing exemptions of State and local government employees and of certain employees connected with educational institutions. The bill would extend some protection to Federal employees. One year after enactment, coverage is extended to employers and labor unions with eight or more employees or members, a reduction from the present requirement of 25 employees or members.

48-006

BACKGROUND OF LEGISLATION

The Equal Employment Opportunity Commission was established under the authority of Title VII of the Civil Rights Act of 1964. Under that authority the Commission is not given the power to issue judicially enforceable orders but is limited essentially to the function of conciliation. In 1965 the Committee recommended passage of a bill supporting cease and desist authority. That bill (H.R. 10065) was acted on favorably in the House of Representatives but was not taken up by the Senate.

In the 91st Congress the Senate succeeded in passing S. 2453, a bill granting the Equal Employment Opportunity Commission self-enforcing cease and desist authority. This Committee, during the second half of the 91st Congress, favorably reported H.R. 17555, identical, with two exceptions, to H.R. 1746. Neither S. 2453 nor H.R. 17555 reached the House floor for debate.

Provisions in H.R. 1746 not found in H.R. 17555 relate to the transfer of the functions and responsibilities of the Office of Federal Contract Compliance (pursuant to Executive Order 11246) to the Equal Employment Opportunity Commission; and the transfer of the Attorney General's authority in "pattern or practice" discrimination suits to the Equal Employment Opportunity Commission.

Time and experience have re-enforced this Committee's strongly held view of the necessity of establishing the Equal Employment Opportunity Commission as a quasi-judicial agency with authority to obtain enforcement of orders. H.R. 1746 is an effort to implement in a meaningful way the national policy of equal employment opportunity for employees without discrimination because of race, color, religion, national origin, or sex.

SUBCOMMITTEE HEARINGS

The General Subcommittee on Labor held six days of public hearings on H.R. 17555 and related bills during the 91st Congress. The principal witnesses were: Honorable William H. Brown, III, Chairman, Equal Employment Opportunity Commission; Deputy Attorney General Richard G. Kleindienst; a panel representing the Leadership Conference on Civil Rights, headed by Clarence Mitchell, Washington Bureau, NAACP, including Thomas C. Harris, Associate Counsel, AFL–CIO; former Commission Chairman Clifford L. Alexander, Jr.; and Irving Kator, Director, Federal Equal Employment Opportunity, U.S. Civil Service Commission.

The subcommittee held hearings on H.R. 1746 on March 3, 4, and 18, 1971. These hearings were primarily concerned with the transfer of the Office of Federal Contract Compliance and the transfer of the Attorney General's practice or pattern discrimination authority to the Equal Employment Opportunity Commission. Witnesses, however, were free to and did submit statements and discuss other significant aspects of the proposed legislation. The principal witnesses were: Deputy Assistant Attorney General David L. Norman; Under Secretary of Labor Laurence Silberman; Assistant Secretary of Labor Arthur Fletcher; OFCC Director John Wilks; Commission Chairman

William H. Brown, III; Howard Glickstein, Staff Director, U.S. Commission on Civil Rights; U.S. Representative Shirley Chisholm; U.S. Representative Bella Abzug; Thomas C. Harris, Associate General Counsel, AFL–CIO; Clarence Mitchell, NAACP; Irving Kator, Assistant Executive Director, U.S. Civil Service Commission; Don White, American Retail Federation; Lucille Shriver, National Federation of Business and Professional Woman; Robert Nystrom, Motorola, Inc.; and Warren Anderson, The Black Committee, Maywood, Illinois.

The subcommittee concluded its consideration of the bill in executive session on April 7, 1971, voting to report the bill to the full Committee without amendment. The Committee on Education and Labor ordered H.R. 1746 by a rollcall vote of 21 to 12 on May 4, 1971.

NEED FOR THE BILL

A little more than 6 years ago, Congress enacted Title VII of the Civil Rights Act of 1964, Public Law 88–352, 42 U.S.C. 2000(e)–2000(e–15). That act recognized the prevalence of discriminatory employment practices in the United States and the need for Federal legislation to deal with the problem. Title VII of that Act, created the Equal Employment Opportunity Commission which became effective July 2, 1965. In the intervening 6 years, the Commission made an heroic effort to reduce discrimination in employment which was found to pervade our system.

Despite the commitment of Congress to the goal of equal employment opportunity for all our citizens, the machinery created by the Civil Rights Act of 1964 is not adequate.

Despite the progress which has been made since passage of the Civil Rights Act of 1964, discrimination against minorities and women continues. The persistence of discrimination, and its detrimental effects require a reaffirmation of our national policy of equal opportunity in employment. It is essential that seven years after the passage of the Civil Rights Act of 1964, effective enforcement procedures be provided the Equal Employment Opportunity Commission to strengthen its efforts to reduce discrimination in employment.

An examination of the statistics with respect to the progress of equal employment opportunities clearly shows that the voluntary approach currently applied has failed to eliminate employment discrimination. During the first 5 years of its existence, the Commission has received more than 52,000 charges. Of these, 35,445 were recommended for investigation. Of this number approximately 56% involved complaints of discrimination because of race, 23% discrimination on sex, and the remainder involved charges of discrimination because of national origin or religion.

The number of charges is increasing. The incidence of discrimination does not appear to be waning. In Fiscal Year 1969, the Commission received 12,148 charges; in Fiscal Year 1970, the Commission received 14,129 charges. In testimony before this Committee, William H. Brown, III, Chairman of the Equal Employment Opportunity Commission, stated that during the first seven and a half months of the current fiscal year, the Commission has received 14,644 charges, a greater number than the total charges received for all of last year.

With the steady growth in the number of cases filed with the Commission, an effective and suitable procedure and remedy become increasingly important. Effective remedies have not resulted from present practice. Of the 35,445 charges that were recommended for investigation, reasonable cause was found in over 63% of the cases, but in less than half of these cases was the Commission able to achieve a totally or even partially successful conciliation.

There is nothing that would lead anyone to expect that with the limited authority currently available to it the Commission might produce any higher degree of compliance in the future. With the increasing number of complaints it now receives, and in the absence of adequate cease and desist enforcement procedures, the Commission can only be expected to catalog an increasing number of complaints for which there is no reasonable expectation of an adequate remedy.

The impact of the Commission's inability to obtain relief from employment discrimination is reflected in an examination of statistics showing the distribution of minorities in occupational groups. While the tables show some improvement since 1964, minority groups are not obtaining their rightful place in our society.

PERCENT DISTRIBUTION OF TOTAL WORK FORCE BY OCCUPATIONAL GROUPS

Occupation	Nonwhites employed			White employed	
	1964	1969	1970	1969	1970
Professional technician	6.7	8.3	9.1	14.5	14.8
Farmer, farm manager	1.9	1.0	1.0	2.5	2.4
Managers, proprietors	2.6	3.0	3.5	11.1	11.4
Clerical	7.6	12.9	13.2	17.7	18.0
Sales	1.8	2.0	2.1	6.5	6.7
Craftsmen	7.0	8.5	8.2	13.6	13.5
Operatives	20.3	23.9	23.7	17.8	17.0
Private household	13.6	8.5	7.7	1.3	1.3
Service workers	18.7	18.2	18.3	9.2	9.4
Farmworkers	6.8	3.2	2.9	1.7	1.6
Laborers (nonfarm)	13.0	10.5	10.3	4.0	4.1

The situation of the working women is no less serious. Women currently comprise approximately 38% of the total work force of the Nation. There are approximately 30 million employed women.

Recent statistics released from the U.S. Department of Labor indicate that there exists a profound economic discrimination against women workers. Ten years ago, women made 60.8% of the average salaries made by men in the same year; in 1968, women's earnings still only represented 58.2% of the salaries made by men in that year. Similarly, in that same year, 60% of women, but only 20% of men earned less than $5,000. At the other end of the scale, only 3% of women, but 28% of men had earnings of $10,000 or more.

Women are subject to economic deprivation as a class. Their self-fulfillment and development is frustrated because of their sex. Numerous studies have shown that women are placed in the less challenging, the less responsible and the less remunerative positions on the basis of their sex alone.

Such blatantly disparate treatment is particularly objectionable in view of the fact that Title VII has specifically prohibited sex dis-

crimination since its enactment in 1964. The Equal Employment Opportunity Commission has progressively involved itself in the problems posed by sex discrimination, but its efforts here, as in the area of racial discrimination, have been ineffective due directly to its inability to enforce its findings.

In recent years, the courts have done much to create a body of law clearly disapproving of sex discrimination in employment.[1] Despite the efforts of the courts and the Commission, discrimination against women continues to be widespread, and is regarded by many as either morally or physiologically justifiable.

This Committee believes that women's rights are not judicial divertissements. Discrimination against women is no less serious than other forms of prohibited employment practices and is to be accorded the same degree of social concern given to any type of unlawful discrimination.

Enactment of this bill will not automatically end employment discrimination in this country. The bill offers no panaceas or guarantees of success. The experiences of the last 6 years under Title VII, while in many respects reflecting major advancements in securing equal opportunity for all Americans, nonetheless are disappointing in terms of what minorities and women in this country have a right to expect.

The time has come to bring an end to job discrimination once and for all, and to insure every citizen the opportunity for the decent self-respect that accompanies a job commensurate with one's abilities. The hopeful prospects that Title VII offered millions of Americans in 1964 must be revived.

Estimate of Costs

In an effort to secure an accurate estimate of the projected costs of this legislation to satisfy the requirements of clause 7 of rule XIII the General Subcommittee on Labor, through its chairman, the Honorable John H. Dent, sought the views of the Equal Employment Opportunity Commission. The response of the Commission to that inquiry is contained in the following letter:

Equal Employment Opportunity Commission,
Washington, D.C., April 22, 1971.

Hon. John H. Dent,
Chairman, General Subcommittee on Labor, Committee on Education and Labor, House of Representatives, Washington, D.C.

Dear Mr. Chairman: Thank you for your letter of March 26, 1971, requesting this Commission, pursuant to Rule XIII, clause 7 of the Rules of the House of Representatives, to submit to the Subcommittee estimated costs for carrying out the provisions of H.R. 1746. I have set out below our cost projections with respect to H.R. 1746, based upon available data and workload approximations for FY 1971 through FY 1976.

It is the Commission's view that the accompanying figures represent a reasonable estimate of minimum additional budgetary requirements for administration of the three new areas of the application of Title VII of the Civil Rights Act of 1964 heretofore not discharged by any Federal agency:

---

[1] See e.g., *Weeks* v. *Southern Bell Telephone Co.*, 408 F. 2d 228 (5th Cir. 1969); *Bowe* v. *Colgate Palmolive Co.*, 416 F. 2d 711 (7th Cir. 1969); *Philips* v. *Martin Marietta Corp.*, ——— U.S. ———, ——— S. Ct. ———, 3 FEP Cases 40 (S. Ct. 1971); *Diaz* v. *Pan American*, ——— F. 2d ———, 3 EPD 8166 (C.A. 5, 1971) and cases cited therein.

COST PROJECTIONS FOR H.R. 1746

[Figures in thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
Cease and desist operations	501	9,431	11,912	12,081	12,123	12,151
Federal, State, county, and municipal jurisdiction		2,600	3,900	3,900	3,900	3,900
Extended jurisdiction to 8 or more employees		685	4,034	4,213	4,223	4,243
Total	501	12,716	19,846	20,194	20,246	20,294

In preparing the above figures, several assumptions have been made which are, I feel, extremely important for consideration of these projections. In the first instance, despite the Commission's desire to commence operations under its own enforcement powers, it is unlikely that any of the operations proposed in H.R. 1746 could be implemented in any significant manner in FY 1971. It will be necessary to develop administrative procedures to implement the bill, and this will require some time. For example, the writing and approval of rules to establish operating procedures and personnel recruitment to meet the additional operational requirements in H.R. 1746 will require several months. It is, therefore, realistic to assume that implementation of the cease and desist operations as well as the other aspects of enforcement contained in the bill would not begin until FY 1972, and that the first full year of operation would not be until FY 1973. Accordingly, the cost projections for FY 1971, and also for FY 1972, based upon a full year's operation as requested by the Subcommittee, are hypothetical, insofar as they assume that operations under H.R. 1746 will begin immediately upon its passage.

The cost projections for the cease and desist operations as proposed by H.R. 1746 have been derived from Commission caseload projections. Using these figures as a base, the staffing requirements for implementation of the hearing procedures encompassed by the cease and desist powers have been projected on the basis of an adjudication of 15 cases per year for each hearing examiner and the preparation and presentation of 20 cases per year for each trial attorney. From these figures, allowances have also been made for a *minimum* of supporting staff and expenses which will be involved in maintaining the hearing process. It is difficult for me to say at this time whether the cease and desist cost projections contained herein are accurate. The assumptions regarding the number of cases that a hearing examiner and a trial attorney will handle per year are based upon approximations of the average length of an adjudication of a Title VII violation based upon the estimated degree of complexity involved in such cases. It may well evolve that these approximations are not realistic; the estimates that each hearing examiner will be able to hear 15 cases per year and that each trial attorney can prepare 20 cases per year are derived from NLRB experience and may not hold true for Title VII litigation.

The extension of Title VII jurisdiction to include Federal, State, county and municipal employees will bring an additional 12,880,000 employees within the provisions of the Act. As there is currently no uniform Federal law which applies in this area, it is difficult to project, with any degree of accuracy, the impact of this extension of jurisdiction. However, due to the large number of employees which this will bring within the provisions of the Act, it can be safely assumed that this new availability of a Federal administrative forum, where none has been available, will generate a substantial number of complaints. The figures projected in the table above for this area of enforcement have been derived from existant Civil Service Commission estimates regarding Federal EEO complaint adjudication, and upon an approximation, based upon the number of employees involved, for enforcement of complaints against State and local agencies.

The figures projected for the extension of Title VII jurisdiction to include all persons employed in establishments which employ eight or more full time employees have been derived from a projected 25% increase in the Commission's workload due to the extended coverage. The cost projections for this extended jurisdiction for FY 1972 assume that the jurisdictional expansion will only operate for the last few months of that year and will not be operational in FY 1971, as H.R. 1746 provides that this power will not become effective until one year after the Act is passed. Similarly, the cost projection for the extended

jurisdiction to Federal, State, county and municipal employees in FY 1972 is based upon less than a full year's operation, as the Act provides for a six-month's delay in instituting this function.

The other two areas of enforcement to be assigned to the Commission by H.R. 1746, transfer of OFCC functions and enforcement of pattern or practice suits, are currently administered by other Federal agencies, and do not, therefore, represent areas of Federal enforcement where new funds will be needed. As regards both the transfer of OFCC functions and the enforcement of pattern or practice suits by the EEOC, H.R. 1746 specifically provides that the functions of the respective agency currently administering these operations, together with "such personnel, property, records, and *unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred . . .*" (emphasis added) shall be transferred to the Commission. Accordingly, in projecting requirements for these operations, the Commission restricted its projections to using only the appropriation requirements proposed by these agencies, as set forth below:

[In thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
OFCC functions	262	2,594	2,600	2,600	2,600	2,600
Pattern or practice enforcement	300	1,800	1,800	1,800	1,800	1,800

Once the above referenced operations have been transferred to the Commission, however, it may subsequently be necessary to modify these figures, dependent upon any change in the enforcement patterns which may become apparent after the consolidation of the enforcement of employment discrimination as proposed by H.R. 1746.

If I can be of any further assistance to you on this matter, please feel free to call on me.

Sincerely,

WILLIAM H. BROWN, III.

The estimate by the General Subcommittee on Labor of the costs of implementing H.R. 1746 vary somewhat from the views of the Commission and are contained in the following chart:

ESTIMATE BY THE GENERAL SUBCOMMITTEE ON LABOR OF THE COST OF IMPLEMENTING H.R. 1746

[In thousands]

	Fiscal year—					
	1971	1972	1973	1974	1975	1976
Cease and desist operations	300	7,431	9,912	10,081	11,123	11,151
Extension of jurisdiction to Federal employees		900	900	900	900	900
Extension of jurisdiction to State, county, and municipal employees		1,600	2,034	3,000	3,000	4,000
Transfer of OFCC functions	262	2,594	2,600	2,600	2,600	2,600
Transfer of pattern or practice functions	300	1,800	1,800	1,800	1,800	1,800
Extension of jurisdiction to 8 or more employees		3,034	3,213	3,223	3,223	4,243

It will be noted that the subcommittee estimates, in most cases, are lower than those of the Commission. With all due respect to the Commission, it is felt that staff recruitment and preparation of applicable implementing rules and regulations will require more time than anticipated by the Commission. Further, the mere existence of a law with enforcement authority will be a deterring factor; therefore it is highly speculative how many new cases will arise as a result of the extension of coverage. The subcommittee does not anticipate any significant costs based on this factor; though a large number of small employers

would be covered. Also, the law would not usurp the State agencies, and undoubtedly a large number of cases would still be settled at the State level.

The transfer of functions from OFCC, CSC, and Justice, will not require additional Federal expenditures because the transfers will also involve the conveyance of "unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred . . ."

Major Provisions of the Bill

Cease and desist enforcement powers

During the preparation and presentation of Title VII of the Civil Rights Act of 1964, employment discrimination tended to be viewed as a series of isolated and distinguishable events, due, for the most part, to ill-will on the part of some identifiable individual or organization. It was thought that a scheme which stressed conciliation rather than compulsory processes would be more appropriate for the resolution of this essentially "human" problem. Litigation, it was thought, would be necessary only on an occasional basis in the event of determined recalcitrance. Experience, however, has shown this to be an oversimplified expectation, incorrect in its conclusions.

Employment discrimination, as we know today, is a far more complex and pervasive phenomenon. Experts familiar with the subject generally describe the problem in terms of "systems" and "effects" rather than simply intentional wrongs. The literature on the subject is replete with discussions of the mechanics of seniority and lines of progression, perpetuation of the present effects of earlier discriminatory practices through various institutional devices, and testing and validation requirements.[2] The forms and incidents of discrimination which the Commission is required to treat are increasingly complex. Particularly to the untrained observer, their discriminatory nature may not appear obvious at first glance. A recent striking example was provided by the U.S. Supreme Court in its decision in *Griggs* v. *Duke Power Co.*, —— U.S. ——, 91 S.Ct. 849, 3 FEP Cases 175 (S.Ct. 1971), where the Court held that the use of employment tests as determinants of an applicant's job qualification, even when nondiscriminatory and applied in good faith by the employer, was in violation of Title VII if such tests work a discriminatory effect in hiring patterns and there is no showing of an overriding business necessity for the use of such criteria.

It is increasingly obvious that the entire area of employment discrimination is one whose resolution requires not only expert assistance, but also the technical perception that a problem exists in the first place, and that the system complained of is unlawful.

---

[2] See, e.g., Note.—80 Harv. L. Rev. 1260 (1967); Cooper and Sobol, "Seniority and Testing Under Fair Employment Laws: A General Approach To Objective Criteria of Hiring and Promotion," 82 Harv. L. Rev. 1623 (1969); Blumrosen, "The Duty of Fair Recruitment Under the Civil Rights Act of 1964," 22 Rutgers Law Review 465 (1968); Sovern, "Legal Restraints on Racial Discrimination in Employment" (1966); "Bonfield, the Substance of American Fair Employment Practices Legislation I and II," 61 and 62 Northwestern Law Review 707 and 19 (1967). See also *Quarles* v. *Phillip Morris*, 279 F. Supp. 505 (E.D. Va., 1968); *United States* v. *Local 189, United Papermakers* 282 F. Supp. 39 (E.D. La., 1968), 416 F. 2d 980 (C.A. 5, 1969); *Asbestos Workers, Local 53* v. *Vogler*, 407 F. 2d. 1047 (C.A. 5 1969) and cases cited therein.

This kind of expertise normally does not reside in either the personnel or legal arms of employers, and the result in terms of conciliation is often an impasse, with the respondent unwilling or unable to understand the problem in the way the Commission perceives it. As we have already noted, the Commission has been able to achieve successful conciliation in less than half of the cases in which reasonable cause was determined. It has been the emphasis on voluntariness that has proven to be most detrimental to the successful operation of Title VII. In cases posing the most profound consequences, respondents have more often than not shrugged off the Commission's entreaties and relied upon the unlikelihood of the parties suing them.

Facts, statistical evidence and experience demonstrate that employers, labor organizations, employment agencies and joint labor-management committees continue to engage in conduct which contravenes the provisions of Title VII. The existence of such practices demonstrates the immediate need to effectuate the purposes of the Civil Rights Act of 1964.

H.R. 1746 remedies the failure to include effective enforcement powers in Title VII by enacting a new section 706 (section 4 of the bill) which empowers the Commission, after it has exhausted the procedures for achieving voluntary compliance, to issue complaints and hold hearings, to issue cease and desist orders against discriminatory practices, and to seek enforcement of its orders in the Federal Courts. Comparable powers are now exercised by most Federal regulatory agencies, the Federal Communications Commission, the Federal Trade Commission, and the National Labor Relations Board, to name a few, as well as the vast majority of State Fair Employment Practice Commissions. By providing this expansion of Title VII authority, we will remove present shortcoming of the act and provide a quick and effective remedy against employment discrimination.

Under the new section 706, in the event of a violation of Title VII the Commission would proceed in the following manner:

1. Upon the filing of a charge, the Commission would serve a copy of the charge on the respondent and would investigate. If, after investigation, the Commission decides that there is no reasonable cause to believe that the charge is true, it would dismiss the charge and notify both the person claiming to be aggrieved and the respondent (sec. 706 706(b)).

2. If the Commission finds reasonable cause, it would seek to eliminate the unlawful practice by informal methods of conference, conciliation, and persuasion (sec. 706(b)). An agreement for the elimination of the alleged unlawful practice may be entered into by the Commission any time between the filing of the charge and until the record is filed with the Court of Appeals (sec. 706(i)).

3. Existing law relating to actions filed under State or local law has been retained. In such cases, the Commission will not assume jurisdiction for sixty days after the commencement of the action under the State or local authority (sec. 706(c)).

4. If the Commission determines that it is unable to secure an acceptable agreement, the Commission will then issue and serve upon the respondent a complaint setting forth the facts upon which the allegation is based and a notice of hearing (sec. 706(f)). The respondent

and the party claiming to be aggrieved shall be the primary parties to the proceeding, but the Commission may grant any other persons the right to intervene, file briefs, or appear as amicus curiae (sec. 706(g)).

5. After completion of a hearing, if an unlawful employment practice is found to have occurred, the Commission is empowered to issue an order requiring the respondent to cease and desist from continuing such practices. The Commission may also prescribe such relief as the case may require (sec. 706(h)). Hearings conducted pursuant to this section will be governed by the Administrative Procedure Act, 5 U.S.C. § 551, et. seq.

6. Any person who has been affected by a decision of the Commission may petition for a review of such order in the appropriate United States court of appeals (sec. 706(l)). All litigation to which the Commission is a party or affecting the Commission, except litigation in the Supreme Court, shall be conducted by the Commission's attorneys; litigation in the Supreme Court will be conducted by the Attorney General (sec. 706(n)).

7. Where the Commission feels that, as a result of its preliminary investigation, prompt judicial action is necessary, it may petition the appropriate United States district court for a preliminary injunction or temporary restraining order, pending its final disposition of the charge (sec. 706(o)).

The Committee has considered various enforcement mechanisms. Experience demonstrates that of the enforcement mechanisms available, cease-and-desist authority will achieve the fairest and most expeditious results.[3]

Administrative tribunals are better equipped to handle the complicated issues involved in employment discrimination cases. In employment discrimination litigation the District Courts increasingly have found themselves grappling with difficult problems of discriminatory practices inherent in employers' basic methods of recruitment, hiring, placement or promotions. Issues that have perplexed courts include plant-wide restructuring of pay scales and progression lines, seniority rosters and testing.

The sorting out of the complexities surrounding employment discrimination can give rise to enormous expenditure of judicial resources in already heavily overburdened Federal district courts. For example, Judge Allgood of the Federal District Court for the Northeastern District of Alabama, wrote an opinion 157 pages in length in *U.S.* v. *H. K.*

---

[3] The committee's view regarding the benefits of cease and desist authority for the Commission has received support from public interest groups. Typical is a letter to the General Subcommittee on Labor, from David A. Brody, Director of the Washington, D.C. Office of the Anti-Defamation League, stating: "In our view, authority to issue cease and desist orders after an administrative hearing will be more effective in bringing about compliance with the law than will the court enforcement approach. It is only through the administrative hearing procedure that regulatory agencies are able to handle expeditiously, and dispose of, the multitude of cases coming before them. The administrative agency is better suited and better geared than the courts for carrying out the public rights which Congress has enacted into law. As the late Justice Frankfurter has stated: "Unlike courts, which are concerned primarily with the enforcement of private rights although public interests may thereby be implicated, administrative agencies are predominantly concerned with enforcing public rights although private interests may thereby be affected. To no small degree administrative agencies for the enforcement of public rights were established by Congress because more flexible and less traditional procedures were called for than those evolved by the courts. It is therefore essential to the vitality of the administrative process that the procedural powers given to these administrative agencies not be confined within the conventional modes by which business is done in courts." Dissenting opinion, *Federal Communications Commission* v. *National Broadcasting Co., Inc.*, 319 U.S. 239,248 (1943).

Porter, a Title VII suit alleging employment discrimination in a single steel plant. Judge Allgood stated in his opinion that enough use was made of pre-trail discovery in that case to "fill several court files".

Administrative tribunals are better suited to rapid resolution of such complex issues than are Courts. Efficiency and predicability will be enhanced if the necessarily detailed case by case findings of fact and fashioning of remedy is performed by experts in the subject matter. Moreover, administrative tribunals are less subject to technical rules governing such matters as pleadings and motion practice—which afford opportunities for dilatory tactics—and are less constrained by formal rules of evidence—which give rise to a lengthier (and more costly) process of proof.

Further, congested Court calendars neccssitate inordinate delays in bringing cases to trial. In fiscal 1970, in the Southern District of New York, the average wait from the time a case was ready for trial until nonjury trial was 38 months. In the Eastern District of Louisiana the delay was 24 months. While delays also are encountered in administrative proceedings, the average amount of time from the filing of a charge until the issuance of the trial examiner's decision in an unfair labor practice case before the National Labor Relations Board is less than 7½ months. Approximately 95% of unfair labor practice cases are disposed of without further proceedings beyond this stage.

In addition, past experience with administrative hearings and court enforcement indicates that cease-and-desist would be more effective. Experience has shown that one of the main advantages of granting enforcement power to a regulatory agency is that the existence of the sanction encourages settlement of complaints before the enforcement stage is reached.

The NLRB disposes of approximately 95% of its cases at the administrative level. Information on State fair employment practice commissions indicates this is similarly effective cease-and-desist authority. For example, through 1969, the Pennsylvania Human Relations Commission pointed to the fact that while 47 cease-and-desist orders were issued in equal employment cases before the State agency, another 3,838 complaints were processed successfully and adjusted without the need for such order.

Cease and desist authority will assure greater consistency in the development of equal employment law since decisions will be rendered by one agency rather than by several hundred district court judges. The uniformity and predictability of rules and decisions are of significant importance to employers who must look to the Federal Government for guidance in equal employment practices and to individuals who look to the Federal Government for leadership and assurance that employment opportunity exists without regard to race, color, religion, sex or national origin.

PRIVATE ACTIONS

The bill retains the right of an individual to bring a civil suit under the Act in Section 715 (Section 6(j) of the bill). Section 715 provides that if the Commission finds no reasonable cause, fails to make a finding of reasonable cause, or takes no action in respect to a charge, or has not within 180 days issued a complaint nor entered into a con-

ciliation or settlement agreement which is acceptable to the person aggrieved, it shall notify the person aggrieved. Within 60 days after such notification the person aggrieved shall then have the right to commence an action under the provisions of the Act against the respondent in the proper United States district court. Provision for the individual's right to sue is presently contained in Section 706(e) of Title VII. Section 715 in the bill retains this right and extends both the period of Commission action and the time period allowed for filing an action in the appropriate court.

In recent years regulatory agencies have been submerged with increasing workloads which strain their resources to the breaking point. The Commission has stated, in testimony before this committee, that its caseload has increased even more rapidly than its projections had anticipated. The result of this increasing use of many of the Federal regulatory agencies has frequently affected those agencies' abilities to remain current on all of the matters for which they are responsible. This has led to lengthy delays in the administrative process and has frequently frustrated the remedial role of the agency. In the case of the Commission, the burgeoning workload, accompanied by insufficient funds and a shortage of staff, has, in many instances, forced a party to wait 2 to 3 years before final conciliation procedures can be instituted. This situation leads the committee to believe that the private right of action, both under the present Act and in the bill, provides the aggrieved party a means by which he may be able to escape from the administrative quagmire which occasionally surrounds a case caught in an overloaded administrative process.

In this respect, it is important to note that subsection 715(a) in the bill provides that where the individual has elected to pursue his action in the court, the court may, in such circumstances as it deems just, appoint an attorney for the complainant and authorize the commencement of the action without the payment of fees, costs or security. By including this provision in the bill, the committee emphasizes that the nature of Title VII actions more often than not pits parties of unequal strength and resources against each other. The complainant, who is usually a member of a disadvantaged class, is opposed by an employer who not infrequently is one of the nation's major producers, and who has at his disposal a vast array of resources and legal talent.

The committee was concerned about the interrelationship between the newly created cease and desist enforcement powers of the Commission and the existing right of private action. It concluded that duplication of proceedings should be avoided. The bill, therefore, contains a provision for termination of Commission jurisdiction once a private action has been filed (except for the power of the Commission to intervene in the private actions). It contains as well a provision for termination of the right of private action once the Commission issues a complaint or enters into a conciliation or settlement agreement which is satisfactory to the Commission and to the person aggrieved. If such an agreement is not acceptable to the aggrieved party, his private right of action is preserved.

The bill provides that an aggrieved person's right to institute a private action should be reactivated under certain circumstances where the Commission does not act promptly after issuing a complaint.

Section 715(a) provides that an aggrieved person may bring an independent action against the respondent if the Commission has not issued its order within 180 days. The committee believes that aggrieved persons are entitled to have their cases processed promptly and that the Commission should develop its capacity to proceed rapidly to hearing and decision once the complaint is issued. The committee recognizes that it will not be possible to render a decision in all cases within the time limit prescribed. The complexity of many of the charges, and the time required to develop the cases, is well recognized by the committee. It is assumed that individual complainants, who are apprised of the need for the proper preparation of a complex complaint involving multiple issues and extensive discovery procedures, would not cut short the administrative process merely to encounter the same kind of delays in a court proceeding. It would, however, be appropriate for the individual to institute a court action where the delay is occasioned by administrative inefficiencies. The primary concern must be protection of the aggrieved person's option to seek a prompt remedy in the best manner available. It should be noted, however, that it is not the intention of the committee to permit an aggrieved party a chance to retry his case merely because he is dissatisfied with the Commission's action. Once the Commission has issued an order, further proceedings must be in the courts of appeals pursuant to subsection 706(1) of the bill.

"PATTERN OR PRACTICE" SUITS

Section 707 of the act has been amended by transferring the "pattern or practice" suit authority from the Department of Justice to the Commission.

"Pattern or practice" discrimination suits are currently handled in the Civil Rights Division of the Department of Justice. This Division, established some 15 years ago, and has had its responsibilities greatly increased by virtue of the civil rights legislation enacted in 1964, 1965, and 1968. It has been given authority to prosecute suits in a variety of areas including public accommodations, public facilities, schools, housing, and discrimination in Federally assisted programs. It has also received authority to deal with voting discrimination and to act against persons who interfere with the civil rights of others.

Unfortunately, the size of the Division has not kept pace with its vastly increased responsibilities. As a consequence the Division has been highly selective and very limited in the number and the nature of suits which it has filed. It has been unable to pursue title VII suits with the vigor and intensity needed to reduce the wide-spread prevalence of systemic discrimination. Indeed, for several years it has accorded the lowest priority to employment discrimination cases.

Those selected suits which the Division has been able to bring, however, have contributed significantly to the Federal effort to combat employment discrimination.[4]

[4] See e.g. *U.S.* v. *Local 189 United Papermakers & Paperworkers*, 282 F. Supp. 39 (E.D. La. 1968), *affirmed* 416 F. 2d 980 (5th Cir. 1969), *cert. denied* 397 U.S. 919 (1970); *U.S.* v. *Hayes International Corp.*, 415 F. 2d 1038, 1045 (5th Cir. 1969); *U.S.* v. *Hayes International Corp.*, 415 F. 2d 1038, 1045 (5th Cir. 1969); *U.S.* v. *Sheet Metal Workers International Association, Local 36*, 416 F. 2d (8th Cir. 1969); *U.S.* v. *Georgia Power Co.*, 301 F. Supp. 538 (N.D. Ga. 1969).

Unrelenting broad-scale action against patterns or practices of discrimination is, however, critical in combatting employment discrimination. The Committee believes these powers should be exercised by the Commission as an integral and coordinated part of the overall enforcement effort.

Pattern or practice discrimination is a pervasive and deeply imbedded form of discrimination. Specific acts or incidents of discrimination within the Commission's jurisdiction are frequently symptomatic of a pattern or practice which Title VII seeks to eradicate. The Commission has the basic responsibility to achieve the objectives of Title VII. Since the Commission is being vested with cease and desist enforcement authority, it is imperative that it be empowered also to deal with "pattern or practice" discrimination in order to deal comprehensively with systemic discrimination.

The Committee feels that the transfer of the "pattern or practice" jurisdiction to the Equal Employment Opportunity Commission would eliminate overlapping jurisdictions and unnecessary duplication of functions. It would promote uniformity in development of law, goals, policies, and procedures and promote economic use of governmental resources. "Pattern or practice" jurisdiction in the Department of Justice was justified at a time when the Commission did not have its own enforcement powers. However, with the acquisition of cease and desist powers, the Commission's operations are sufficiently broad to encompass "pattern or practice" violations as well as individual complaints of discrimination.

The Commission is best able to determine where "pattern or practice" litigation is warranted. It has access to the most current statistical computations and analyses regarding employment patterns and has the most extensive expertise in dealing with employment discrimination.

Most importantly, persons charged with unfair employment practices should not be answerable to several Federal agencies pursuing separate policies. Multifarious remedies cause undue burden and harassment by a multiplicity of simultaneous or successive procedures. An example is the *Crown Zellerbach Corp.* vs. *U.S.* (Supra. 5th circuit, 1969) where the union and employer after negotiating a compliance agreement with the Commission were nevertheless subjected to litigation in the Federal court. Next the Office of Federal Contract Compliance entered the picture. Ultimately the Department of Justice filed suit. Such duplication and overlapping proceedings are burdensome and harassing and should be avoided.

TRANSFER OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

Approximately one third of the Nation's labor force is employed by government contractors. Not infrequently these employers are the Nation's largest and most prestigious firms. Because of their size and standing in the business community, these employers are leaders in the employment practices of their respective industries. The policies they adopt, therefore, are frequently prototypes for the industry at large.

Section 717(f) of the H.R. 1746 transfers all the authority, functions, and responsibilities of the Secretary of Labor pursuant to Ex-

ecutive Order 11246 relating to contract compliance to the Equal Employment Opportunity Commission.

Pursuant to Executive Order 11246, the Secretary of Labor is responsible for the administration of the Federal Government's contract compliance program as prescribed by the executive order. He is responsible for adopting such rules and regulations and issuing such orders as he deems necessary and appropriate to achieve the purposes of the order. The Secretary of Labor through OFCC monitors, coordinates and evaluates the Government-wide contract compliance program and supervises the activities of the 15 Federal contracting agencies which have responsibility for contract compliance in their respective areas.

Despite the increasingly strong Presidential commitment to the goals of equal employment opportunity, despite the strength of the sanctions available to secure this goal, and despite the potential effectiveness of the Federal monitoring mechanisms, the contract compliance program has not been successful.

The Committee believes that the transfer will benefit both the administration of the contract compliance program and the Title VII program. The two programs are addressed to the same basic mission—the elimination of discrimination in employment.

The obligations imposed on the government contractor by the Executive Order would reinforce the obligations imposed by Title VII. The transfer would promote the centralized enforcement of all Federal employment non-discrimination programs. It would reduce administrative overlap and encourage coordination. Clarity, uniformity, and predictability in policy and practice are aided by having the definition of discrimination and the shaping of remedies developed by a single agency. More significantly, it will authorize a single agency with a full complement of enforcement mechanisms that can be coordinated in the attack on employment discrimination.

Studies have shown that current jurisdictional overlap between the Office of Federal Contract Compliance and the Equal Employment Opportunity Commission have contributed to confusion, duplication and a general lack of coordination of equal employment opportunity enforcement programs.

Although administrative efforts have been made to coordinate the overlapping legal jurisdictions of the Commission and OFCC, such as the memorandum of understanding agreed to in May 1970, they have not been effective. Each agency has continued independently to develop its goals, policies and programs. As a result, the entire Federal effort to end employment discrimination in the private sector has suffered.

The U.S. Commission on Civil Rights in its report, *Federal Civil Rights Enforcement Effort* noted that OFCC has established industry-wide hiring goals without full consultation with the Commission which possesses substantial knowledge and expertise in this area. The Commission on the other hand, has held hearings to examine the patterns of industry-wide discrimination without consultation or effective participation of OFCC. Cases continue to be referred between the Commission and OFCC on an *ad hoc* basis.

The report concluded that "until an effective procedure is developed to assure that the Commission and OFCC act in coordination, prog-

ress in achieving the goal of equal employment opportunity will continue to be impeded." To achieve this end the report recommends that the contract compliance responsibilities of the Office of Federal Contract Compliance be transferred to the Equal Employment Opportunity Commission.

This conclusion corresponds with the recommendations made in an earlier publication of the U.S. Commission on Civil Rights, *Jobs and Civil Rights*, prepared by Richard P. Nathan, Associate Director of the Office of Management and Budget, then with the Brookings Institute. Mr. Nathan recommended that the contract compliance function of OFCC be transferred to the Equal Employment Opportunity Commission. The report underscored the fact that Title VII and the Executive Order 11246 are addressed to the same problem—identifying and remedying employment discrimination—and that there is not reasonable basis for continuing to have two duplicating mechanisms dealing with the same problem.

The Committee believes that the transfer would substantially increase the effectiveness of both the contract compliance and Title VII enforcement programs. Affirmative action is relevant not only to the enforcement of Executive Order 11246 but is equally essential for more effective enforcement of Title VII in remedying employment discrimination. H.R. 1746 would confer, cease-and-desist authority as well as contract termination and debarment authority on the Equal Employment Opportunity Commission. The availability of these complementary sanctions will enhance the administration of the Federal equal employment programs.

The Federal contract compliance program always has suffered from the great reluctance of administrators to use debarment and contract termination sanction.

Although contract termination could become an effective sanction if used properly, it is clear that the compliance program could be strength considerably if alternative remedies were made available. An effective way to accomplish this is to transfer the contract compliance effort to the Equal Employment Opportunity Commission while at the same time giving the Commission power to issue cease-and-desist orders to prevent unlawful employment practices. Cease-and-desist power exercised by the Equal Employment Opportunity Commission would prove to be an effective sanction supplementary or alternative to termination of a contract. Conversely, having the authority to direct that contracts be terminated and contractors debarred would enhance the Equal Employment Opportunity Commission's ability to ensure that its cease and desist orders are obeyed.

The transfer of OFCC's contract compliance program to the Equal Employment Opportunity Commission will not impair the procurement function of the Executive branch of the government nor will it interfere with the government's internal functions. Primary responsibility for compliance with still rest with the various compliance agencies. The Equal Employment Opportunity Commission will be responsible, however, for issuing basic guidelines to coordinate and give guidance to the compliance program. In addition, the Commision will provide an additional independent source of review and resource if the compliance agencies fail to meet their obligations.

STATE AND LOCAL GOVERNMENT EMPLOYEES

Presently approximately 10.1 million persons are employed by State and local governmental units. This figure represents an increase of over 2 million employees since 1964. Indications are that the number of employees in State and local government will continue to increase, perhaps even more rapidly. Few of these employees, however, are afforded the protection of an effective forum to assure equal employment. The bill amends section 701 of the Civil Rights Act of 1964 (section 2 of the bill) to include State and local governments, governmental agencies and political subdivisions within the definition of an "employer" under Title VII. All State and local government employees would under the bill have access to the remedies available under the Act.

In a report released in 1969, the U.S. Commission on Civil Rights examined equal employment opportunity in public employment in seven urban areas located throughout the country—North as well as South. The report's findings indicate that widespread discrimination against minorities exists in State and local government employment, and that the existence of this discrimination is perpetuated by the presence of both institutional and overt discriminatory practices. The report cites widespread perpetuation of past discriminatory practices through *de facto* segregated job ladders, invalid selection techniques, and stereotyped misconceptions by supervisors regarding minority group capabilities. The study also indicates that employment discrimination in State and local governments is more pervasive than in the private sector. The report found that in six of the seven areas studied, Negroes constitute over 70 percent of the common laborers, but that most white-collar jobs were found to be largely inaccessible to minority persons. For example, in Atlanta and Baton Rouge, there were no blacks in city managerial positions.

In another report issued by the U.S. Commission on Civil Rights in 1970, *Mexican Americans and the Administration of Justice in the Southwest*, the Commission found, on the basis of a 1968 survey, that in the law enforcement agencies and district attorneys' offices in the five Southwestern States, Mexican Americans were generally underrepresented in proportion to their demographic distribution. The statistics in this report show that in the Southwestern States Mexican Americans, who constitute approximately 12 percent of the population, account for only 5.2 percent of police officers and 6.11 percent of civilian employers with law enforcement agencies.

The problem of employment discrimination is particularly acute and has the most deleterious effect in these governmental activities which are most visible to the minority communities (notably education, law enforcement, and the administration of justice) with the result that the credibility of the government's claim to represent all the people equally is negated.

This widespread discrimination is evidence that State and local governmental units have not instituted equal employment opportunity required by the national policy to eliminate discrimination in employment. In its 1969 report, *For All the People . . . By All the People*, the U.S. Civil Rights Commission concludes that:

> The basic finding of this report is that State and local governments have failed to fulfill their obligation to assure equal job opportunity. . . . Not only do State and local governments consciously and overtly discriminate in hiring and promoting minority group members, but they do not foster positive programs to deal with discriminatory treatment on the job.

The Constitution is as imperative in its prohibition of discrimination in state and local government employment as it is in barring discrimination in Federal jobs. The courts have consistently held that discrimination by state and local governments, including job discrimination, violates the Fourteenth Amendment and is prohibited.[5]

While an individual has a right of action in the appropriate court if he has been discriminated against, the adequacy of protection against employment discrimination by state and local governments has been severely impeded by the failure of the Congress to provide Federal administrative machinery to assist the aggrieved employee. There are two exceptions. Federal Merit Standards provisions are applied to approximately 250,000 state employees where the Federal and state governments participate jointly in furnishing government services, and there are nondiscrimination requirements Department of Housing and Urban Development (HUD) contracts which are applicable to approximately 900 local urban renewal agencies and 2,000 local public housing authorities.

Otherwise, state and local governments constitute the only large group of employees in the nation who are almost entirely exempt from Federal nondiscrimination protections. Although the aggrieved individual may enforce his rights directly in the Federal district courts, this remedy, as already noted, is frequently an empty promise due to the expense and time involved in pursuing a Federal court suit. It is unrealistic to expect disadvantaged individuals to bear the burden.

The Committee feels that it is an injustice to provide employees in the private sector with an administrative forum in which to redress their grievances while at the same time, denying a similar protection to the increasing number of state and local employees. Accordingly, H.R. 1746 provides the administrative remedies available to employees in the private sector should also be extended to state and local employees.

In establishing the applicability of Title VII to State and local employees, the Committee wishes to emphasize that the individual's right to file a civil action in his own behalf, pursuant to the Civil Rights Act of 1870 and 1871, 42 U.S.C. §§ 1981 and 1983, is in no way affected. During the floor debate surrounding the passage of Title VII of the Civil Rights Act of 1964, it was made clear that the Act was not intended to preempt existing rights under the National Labor Relations Act or the Railway Labor Act. Title VII was envisioned as an independent statutory authority meant to provide an aggrieved individual with an additional remedy to redress employment dis-

[5] See e.g., *Shelly* v. *Kraemer*, 334 U.S. 1 (1948); *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961).

crimination. Two recent court decisions, *Young* v. *International Telephone and Telegraph Co.*, ——F. 2d ——, 3 FEP Cases 145 (3rd Cir. 1971) and *Saunders* v. *Dobbs House*, 431 F. 2d 1097 (5th Cir. 1970), have affirmed this Committee's belief that the remedies available to the individual under Title VII are co-extensive with the individual's right to sue under the provisions of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and that the two procedures augment each other and are not mutually exclusive. The bill, therefore, by extending jurisdiction to State and local government employees does not affect existing rights that such individuals have already been granted by previous legislation.

The expansion of Title VII coverage to State and local government employment is firmly embodied in the principles of the Constitution of the United States. The Constitution has recognized that it is inimical to the democratic form of government to allow the existence of discrimination in those bureaucratic systems which most directly affect the daily interactions of this Nation's citizens. The clear intention of the Constitution, embodied in the Thirteenth and Fourteenth Amendments, is to prohibit all forms of discrimination.

Legislation to implement this aspect of the Fourteenth Amendment is long overdue, and the committee believes that an appropriate remedy has been fashioned in the bill. Inclusion of state and local employees among those enjoying the protection of Title VII provides an alternate administrative remedy to the existing prohibition against discrimination perpetuated "under color of state law" as embodied in the Civil Rights Act of 1871, 42 U.S.C. § 1983. In extending Title VII coverage, the Committee recognizes that States frequently can best deal with violations which occur within their boundaries and has, accordingly, retained the provisions of Section 706(b) of the present Act (706(c) under the bill) whereby the Commission will defer to appropriate State agencies cases where the State or local agency can grant the complainant relief similar to that which he can obtain with the Commission under the provisions of this bill.

EDUCATIONAL INSTITUTION EMPLOYEES

The present Section 702 of Title VII exempts educational institution employees connected with educational activities from the equal employment requirements. The bill removes this exemption (Section 3 of the bill).

There is nothing in the legislative background of Title VII, nor does any national policy suggest itself to support the exemption of these educational institution employees—primarily teachers—from Title VII coverage. Discrimination against minorities and women in the field of education is as pervasive as discrimination in any other area of employment. In the field of higher education, the fact that black scholars have been generally relegated to all-black institutions, or have been restricted to lesser academic positions when they have been permitted entry into white institutions is common knowledge. Similarly, in the area of sex discrimination, women have long been invited to participate as students in the academic process, but without the prospect of gaining employment as serious scholars.

When they have been hired into educational institutions, particularly in institutions of higher education, women have been relegated to positions of lesser standing than their male counterparts. In a study conducted by Theodore Kaplow and Reece J. McGee, it was found that the primary factors determining the hiring of male faculty members were prestige and compatability, but that women were generally considered to be outside of the prestige system altogether.[6]

The committee feels that discrimination in educational institutions is especially critical. The committee can not imagine a more sensitive area than educational institutions where the Nation's youth are exposed to a multitude of ideas that will strongly influence their fuure development. To permit discrimination here would, more than in any other area, tend to promote misconceptions leading to future patterns of discrimination. Accordingly, the committee feels that educational institutions, like other employers in the Nation, should report their activities to the Commission and should be subject to the provisions of the Act.

EMPLOYERS AND LABOR UNIONS WITH EIGHT OR MORE EMPLOYEES OR MEMBERS

The bill amends section 701 of the Act, by changing the jurisdictional reach of Title VII to include all employers and labor unions with eight or more employees or members, effective one year after enactment (section 2 of the bill). The present coverage is 25 or more employees or members.

The committee feels that discrimination in employment is contrary to the national policy and equally invidious whether practiced by small or large employers. Because of the existing limitation in the bill proscribing the coverage of Title VII to 25 or more employees or members, a large segment of the Nation's work force is excluded from an effective Federal remedy to redress employment discrimination. For the reasons already stated in earlier sections of this report, the committee feels that the Commission's remedial power should also be available to all segments of the work force. With the amendment proposed by the bill, Federal equal employment protection will be assured to virtually every segment of the Nation's work force.

TESTING

Section 8 of the bill amends subsection 703(h) of the Act and perfects the Title VII provisions dealing with testing and apprenticeship training. Tests, while they are a useful and necessary selection device for management purposes, often operate unreasonably and unnecessarily to the disadvantage of minority individuals. General intelligence tests commonly used by employers as selection devices for hiring and promotion deprive minority group members of equal employment opportunities.[7] Culturally disadvantaged groups—groups

[6] See generally, Kaplow and McGee, *The Academic Marketplace,* Anchor Edition (Garden City: 1965).

[7] See e.g., M. Culhane, "Testing the Disadvantaged," *The Journal of Social Issues* (April, 1965); D. Goslin, *The Search for Ability: Standarized Testing on Social Perspective,* (New York: Russell Sage Foundation (1963)); R. Krug, "The Problem of Cultural Bias in Selection," *Selecting and Training Negroes for Management Positions,* Princeton: Educational Testing Service (1965).

which because of low incomes, substandard housing, poor education, and other "atypical" environmental experiences—perform less well on these types of tests on the average than do applicants from middle class environments. The net result is that members from culturally disadvantaged groups are screened out of employment and training programs merely because of their failure to score well on such tests. Such tests are often irrelevant to the job to be performed by the individual being tested and uncritical reliance on test results may not aid management decisions and selection of personnel, but will screen out the disadvantaged minority individual.

In a report issued in 1970, *Personnel Testing and Employment Opportunity*, the Commission describes the ways in which employment tests can discriminate against minority groups. An aptitude test that fails to predict job performance in the same way for both minorities and whites, or fails to predict job performance at all is an invalid test. If such a test is weighted to differentiate between blacks and whites, it is similarly discriminatory. Tests may discriminate in the social sense if they deny equal opportunity for consideration. A test which tends to discriminate generally operates in the following manner: (a) when scores on it tend to differentiate between identifiable sub-groups where sub-grouping itself is not a relevant factor, and either (b) scores for the lower group underpredict performance on the job when the standards of the upper group are applied, or (c) scores on the test do not predict job performance of either group.

The Supreme Court recently examined the problem of employment testing and its relationship to employment discrimination in its decision in *Griggs* v. *Duke Power Co.*, ——— U.S. ———, 91 S. Ct. 849 (1971). In its decision, the court held that employment tests, even if valid on their face and applied in a non-discriminatory manner, were invalid if they tended to discriminate against minorities and the company could not show an overriding reason why such tests were necessary. At page 5 of its opinion, the Court stated:

> The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent cannot be maintained if they operate to "freeze" the status quo of prior discriminatory practices.

The Court stated further, on page 6 of its opinion, that:

> Congress has now provided that tests or criteria for employment or promotion may not provide equality of opportunity only in the sense of the fabled offer of milk for the stork and the fox. On the contrary, Congress has now required that the posture and condition of the job seeker be taken into account . . . . The Act proscribes not only overt discrimination but also practices that are fair in form but discriminatory in operation. The touchstone is business neces-

> sity. If an employment practice which excludes Negroes cannot be shown to be related to job performance, the practice is prohibited.

The provisions of the bill are fully in accord with the decision of the Court and with the testing guidelines established by the Commission. The addition of the requirement for a bona fide occupational qualification which is reasonably necessary to perform the normal duties of the position to which it is applied requires that employers, who use employment tests as determinants for qualifications of employees for a particular job, must determine whether the test is necessary for the particular position to which it is applied. Even after such determination, if the use of the test acts to maintain existing or past discriminatory imbalances in the job, or tends to discriminate against applicants on the basis of race, color, religion, sex or national origin, the employer must show an overriding business necessity to justify use of the test.

Section 8 perfects Title VII's provisions with respect to testing and apprenticeship training. With regard to testing, the amendment is limited to tests for particular positions; it is not intended to apply to tests given to ascertain potential ability to undertake apprenticeship or other learning capacities. Of course, tests given for apprenticeship and related status must satisfy the requirement that the test, its administration or action upon the results, is not designed, intended, used, or have the effect of discriminating because of race, color, religion, sex or national origin.

FEDERAL EMPLOYMENT

The bill adds a new section 717 (section 11 of the bill) which, in paragraphs (a) and (b), gives the Equal Employment Opportunity Commission the authority to enforce the obligations of equal employment opportunity in Federal employment.

The Federal service is an area where equal employment opportunity is of paramount significance. Americans rely upon the maxim, "government of the people," and traditionally measure the quality of their democracy by the opportunity they have to participate in governmental processes. It is therefore imperative that equal opportunity be the touchstone of the Federal system.

The prohibition against discrimination by the Federal Government, based upon the due process clause of the fifth amendment to the Constitution, was judicially recognized long before the enactment of the Civil Rights Act of 1964.[8] And Congress itself has specifically provided that it is "the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin. . . ." (5 U.S.C. § 7151 (Supp. II 1965, 1966)).

The primary responsibility for implementing this stated national policy has rested with the Civil Service Commission, pursuant to Executive Order 11246 (1964) as clarified by Executive Order 11748.

In his memorandum accompanying Executive Order 11478, President Nixon stated that "discrimination of any kind based on factors

[8] See *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S. Ct. 693 (1954), and cases cited therein.

not relevant to job performance must be eradicated completely from Federal employment." Accordingly there can exist no justification for anything but a vigorous effort to accord Federal employees the same rights and impartial treatment which the law seeks to afford employees in the private sector.

Despite some progress that has been made in this area, the record is far from satisfactory. Statistical evidence shows that minorities and women continue to be excluded from large numbers of government jobs, particularly at the higher grade levels. According to statistics released by the Civil Service Commission, as of May 31, 1970, minorities accounted for 19.4 percent of the total number of government employees and 14.4 percent of general schedule employees. An examination of the distribution of employees within the various levels of the Federal system shows that the majority of these employees are at the lower levels of government employment. Approximately 80% of the minority employees on the general schedule are in grades 1 through 8. In grades GS–1 through 4 minorities account for 27.3 percent of all employees, and in grades GS–5 through 8 they represent 17.2 percent of all employees. On the other end of the scale, in grades GS–14 through 15, minorities represent only 3.3 percent of all employees, and at grades GS–16 through 18 minorities account for 2.0 percent of all employees. These figures represent little improvement over the statistics from the previous study done by the Civil Service Commission in November, 1969. In fact comparison of the two sets of figures shows no perceptible change in the proportion of minorities in the Federal service during the 6 month period. Although minority representation in positions above GS–14 has increased slightly the minority concentration in the lower level positions (GS–1–4) has also increased by .6% from 26.7%.

The figures for Spanish-surnamed employees reflect a similar pattern. For example, according to the 1970 statistics, only 2.9% of the Federal employees were Spanish-surnamed (this was an increase from 2.8% in November, 1969). Only .63% of the government executives (GS–14—18) were Spanish-surnamed. Over 72% of the Spanish-surnamed employees on the General Schedule were in positions of GS–8 and below.

Moreover, figures show different levels of minority representation within the different agencies. For example, although 15% of Federal employees are Negro, only 5.2% of the Department of Interior's employees are Negro and 2.9% of NASA's employees are Negro. According to 1967 figures, fewer than 550 of the Federal Aviation Administration's air traffic controllers out of a total of over 20,000 were minority. Only 13 out of the Administration's 1,612 supervisory and administrative personnel (GS–14 to 18) were Negro.

This disproportionatte distribution of minorities and women throughout the Federal bureaucracy and their exclusion from higher level policy-making and supervisory positions indicates the government's failure to pursue its policy of equal opportunity.

A critical defect of the Federal equal employment program has been the failure of the complaint process. That process has impeded rather than advanced the goal of the elimination of discrimination in

Federal employment. The defect, which existed under the old complaint procedure, was not corrected by the new complaint process. The new procedure, intended to provide for the informal resolution of complaints, has, in practice, denied employees adequate opportunity for impartial investigation and resolution of complaints.

Under the revised procedure, effective July 1, 1969, the agency is still responsible for investigating and judging itself. Although the procedure provides for the appointment of a hearing examiner from an outside agency, the examiner does not have the authority to conduct an independent investigation. Further, the conclusions and findings of the examiner are in the nature of recommendations to the agency head who makes the final agency determination as to whether discrimination exists. Although the complaint procedure provides for an appeal to the Board of Appeals and Review in the Civil Service Commission, the record shows that the Board rarely reverses the agency decision.

The system, which permits the Civil Service Commission to sit in judgment over its own practices and procedures which themselves may raise questions of systemic discrimination, creates a built-in conflict-of-interest.

Testimony reflected a general lack of confidence in the effectiveness of the complaint procedure on the part of Federal employees. Complainants were skeptical of the Civil Service Commission's record in obtaining just resolutions of complaints and adequate remedies. This has discouraged persons from filing complaints with the Commission for fear that it will only result in antagonizing their supervisors and impairing any hope of future advancement.

Aside from the inherent structural defects the Civil Service Commission has been plagued by a general lack of expertise in recognizing and isolating the various forms of discrimination which exist in the system. The revised directives to Federal agencies which the Civil Service Commission has issued are inadequate to meet the challenge of eliminating systemic discrimination. The Civil Service Commission seems to assume that employment discrimination is primarily a problem of malicious intent on the part of individuals. It apparently has not recognized that the general rules and procedures it has promulgated may actually operate to the disadvantage of minorities and women in systemic fashion. All too frequently policies established at the policy level of the Civil Service Commission do not penetrate to lower administrative levels. The result is little or no action in areas where unlawful practices are most pronounced. Civil Service selection and promotion requirements are replete with artificial selection and promotion requirements that place a premium on "paper" credentials which frequently prove of questionable value as a means of predicting actual job performance. The problem is further aggravated by the agency's use of general ability tests which are not aimed at any direct relationship to specific jobs. The inevitable consequence of this, as demonstrated by similar practices in the private sector, and, found unlawful by the Supreme Court, is that classes of persons who are culturally or educationally disadvantaged are subjected to a heavier burden in seeking employment.

To correct this entrenched discrimination in the Federal service, it is necessary to insure the effective application of uniform, fair and

strongly enforced policies. The present law and the proposed statute do not permit industry and labor organizations to be the judges of their own conduct in the area of employment discrimination. There is no reason why government agencies should not be treated similarly. Indeed, the government itself should set the example by permitting its conduct to be reviewed by an impartial tribunal. Because the Equal Employment Opportunity Commission is the expert agency in the field of employment discrimination and because it is an independent agency removed from the administration of Federal employment, it is the most logical place for the enforcement power to be vested.

Despite the series of executive and administrative directives on equal employment opportunity, Federal employees, unlike those in the private sector to whom Title VII is applicable, face legal obstacles in obtaining meaningful remedies. There is serious doubt that court review is available to the aggrieved Federal employee. Monetary restitution or back pay is not attainable. In promotion situations, a critical area of discrimination, the promotion is often no longer available. Information and documents contained in Government files are not obtainable since the Freedom of Information Act exempts internal personnel rules. Under the proposed law, court review, back pay, promotions, reinstatement, and appropriate affirmative relief is available to employees in the private sector; also the Commission has broad powers to conduct an intensive investigation and obtain access to all pertinent records.

The Commission is established as a government administrative agency to protect employees against discrimination. This agency under the proposed law assumes the burden and expense of litigation to obtain adequate redress for the employee. These substantial benefits and protections are not presently available to the Federal employee. Presently the Federal employee is entirely dependent on his own resources and does not have recourse to an impartial governmental agency with developed expertise.

The transfer of the civil rights enforcement function from the Civil Service Commission to the Equal Employment Opportunity commission does not preclude the Civil Service Commission from maintaining its internal equal employment programs. Consistent with Federal law it is expected that the Civil Service Commission and the Federal agencies will continue their commitment to affirmative measures such as recruiting and training, specialized hiring programs, the training of compliance personnel and supervisory Federal personnel in equal employment, and the appointment of EEO officers. In all these cases, the primary responsibility shall rest with the Civil Service Commission and the other Federal agencies. The Equal Employment Opportunity Commission will work closely with these agencies to aid the development and maintenance of programs which will best serve the needs for equal employment in the government. It is expected that the expertise of the Equal Employment Opportunities Commission will be utilized to review existing programs, to evaluate new systems which will be established, and to issue guidelines and standards where appropriate. The Equal Employment Opportunity Commission will be authorized by the statute to hear com-

plaints of discrimination in Federal employment and establish appropriate procedures for an impartial adjudication of the complaints.

An employee of a Federal agency may have recourse to a civil action, as provided in section 715 (discussed infra), if he is not satisfied with the disposition of his complaint.

SECTION-BY-SECTION ANALYSIS

Section 1

This section contains the enacting clause and style of the Act.

Section 2, Jurisdiction

Section 701(a).—This subsection defines "person" to include State and local governments, governmental agencies and political subdivisions.

Section 701(b).—This subsection would extend coverage of employers to those with eight or more employees at the end of the first year. This subsection would broaden the meaning of "employer" to include State and local governments and the District of Columbia departments or agencies (except those subject by statute to procedures of the Federal competitive service as defined in 5 USC 2102).

Section 701(c).—This subsection eliminates the exemption for agencies of the States or of political subdivisions of States from the definition of "employment agency" in order to conform with the expanded coverage of State and local governments in section 701(a) and (b).

Section 701(e).—This subsection is revised to include coverage of labor organizations with eight or more members after the first year.

Section 701(h).—This subsection is revised to include "any governmental industry, business, or activity" in the definition of "industry affecting commerce."

Section 3. Educational Institutions

Section 702.—Comparable to present Section 702. The exemption currently provided to certain employees (primarily teachers) of educational institutions is deleted.

Section 4. Employment

Section 706(a).—New Section. The Commission is empowered to prevent any person from engaging in any unlawful employment practice as set forth in Sections 703 or 704.

Section 706(b).—Comparable to present Section 706(a). The requirement that aggrieved person's charges be made under oath is deleted. Charges shall contain such information as the Commission requires. Charges may also be filed on behalf of persons aggrieved. The Commission shall make its finding as to reasonable cause as promptly as possible, and so far as is practicable, not later than 120 days from the filing of the charge, or when deferral is applicable under subsection (c) or (d), from the date on which the Commission is authorized to take action with respect to the charge. If reasonable cause is not found, the Commission shall dismiss the charge, giving prompt notification to the parties. The conciliation and confidentiality provisions are retained.

Section 706(c).—Comparable to present Section 706(b). Charges of persons in FEPC States may be filed with the Commission, but the lat-

ter may take no action until 60 days after commencement of proceedings in the appropriate State or local agency (120 days if a new ageney). The latter proceeding shall be deemed to have commenced at the time a written statement of the facts is sent to sueh agency by certified mail.

Section 706(d).—Comparable to present Section 706(e).

Section 706(e).—Comparable to present Section 706(d). The 90 day filing period is expanded to 180 days, and the 210 day period to 300 days (or 30 days after receiving notice of termination of proceedings, whichever comes earlier). Provision is added requiring that a copy of the charge be served on the respondent as soon as practicable after filing.

Section 706(f).—Comparable to present Section 706(e). After attempting to secure voluntary compliance under subsection (b), if the Commission determines (which determination is not reviewable in any court) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and the person aggrieved, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent of it, at a specified place not less than 5 days after service of the complaint and notice. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

Section 706(g).—New Section. Respondent has the right to file an answer to the complaint and with the Commission's permission, may amend his answer at any time if deemed reasonable. Respondent and the person aggrieved shall be parties and may appear at any stage of the proceedings with or without counsel. The Commission may grant others the right to intervene or file briefs or make oral arguments as amicus curiae, or for other purposes as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

Section 706(h).—New Section. If the Commission finds that respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served upon the respondent and aggrieved person an order requiring the respondent to cease and desist from such unlawful employment practice and take such affirmative action (including reinstatement or hiring with or without back pay) as will effectuate the policies of the Act. Interim earnings or amounts earnable with reasonable diligence operate to reduce the backpay otherwise allowable. Such order may further require the respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finding is that no unlawful employment practice occurred, it shall state its findings of fact and so notify the respondent and complainant of an order dismissing the complaint.

Section 706(i).—New Section. After a charge has been filed and until the record has been filed in court, the proceedings may at any time be ended by agreement between the Commission and the parties and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any order or finding issued or made by

it. An agreement approved by the Commission shall be enforceable under subsection (k).

Section 706(j).—New Section. Findings of fact or orders made or issued under subsection (b) or (i) shall be determined on the record.

Section 706(k).—New Section. The Commission may petition any U.S. Court of Appeals wherein whose circuit the unlawful employment practice occurred or wherein respondent resides or transacts business, for enforcement of its order and for appropriate temporary relief or restraining order. The Commission shall file in the court the record of its proceedings as provided in section 2112 of title 28 of the U.S. Code. Upon serving notice on the parties, the court shall have jurisdiction and the power to grant such temporary relief, restraining order, or other order as it deems just and proper and enter upon the record a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part the order of the Commission. No objection that has not been urged before the Commission, its member, or its agent shall be considered by the court except under extraordinary circumstances. The findings of the Commission with respect to questions of fact shall be conclusive if supported by substantial evidence on the record considered as a whole. The court may order additional evidence to be taken by the Commission, which may then modify its fact findings. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree final, subject only to review by the Supreme Court.

Section 706(l).—New Section. Any party aggrieved by a final order of the Commission may obtain review of such order in any U.S. Court of Appeals in the circuit wherein the unlawful employment practice was alleged to have been engaged in or wherein such person resides or transacts business, or in the D.C. Court of Appeals. Upon receiving a copy of such petition, the Commission shall file in the court the record of its proceedings, and the court shall then proceed in the same manner as in the case of a petition by the Commission under subsection (k). Commencement of proceedings under this subsection or subsection (k) shall not operate as a stay of the Commission's order.

Section 706(m).—New Section. The provisions of 29 U.S.C. 101–115 with respect to preliminary injunctions are made inapplicable to judicial proceedings under the Title.

Section 706(n).—New Section. The general counsel of the Commission shall conduct all litigation affecting it, or to which it is a party, except that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court.

Section 706(o).—New Section. When after the filling of a charge, the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief, it may bring an action for appropriate temporary or preliminary relief in the district court for the district where the unlawful employment practice is alleged to have been committed, or in the district where the aggrieved person would have been employed, or if the respondent cannot be found in these districts, in the district where the respondent has his principal office. Upon the bringing of such action, the district court may grant such injunctive relief or temporary restraining order as it deems just and proper, as governed by Rule 65 of the Federal Rules of Civil Procedures.

Section 5. Records Required To Be Kept and Investigations

Section 707(c).—New Section. Any record or paper required by section 709(c) shall be made available to the Commission on written demand, for purposes of inspection and copying, but unless otherwise ordered by a court of the United States, the Commission shall not disclose any information thus obtained except to Congress or any committee thereof, a governmental agency, or in the presentation of any case or preceding before any court or grand jury. The appropriate district court may compel the production of such records or papers.

Section 707(d).—Transfers the function of the Attorney General with respect to patterns or practice of resistance to the full enjoyment of the rights secured by Title VII, together with personnel, property, records and funds, to the Commission.

Section 707(e).—Provides for continuation by the Commission of pending proceedings brought by the Attorney General under Section 707.

Section 707(f).—Assimilates procedures for new proceedings brought under Section 707 to those now provided for under Section 706 so that the Commission may provide an administrative procedure to be the counterpart of the present Section 707 action.

Section G. State and Local Agencies, Recordkeeping

Section 709(b).—Comparable to present Section 709(b). The contracts to State and local agencies language is enlarged to include Commission contributions to research and other projects of mutual interest, and payment to State and local agencies may be made in advance as well as in reimbursement. The provisions concerning agreements whereby no civil actions may be brought is omitted. The power of the Commission to rescind any agreement no longer serving the interest of effective enforcement is retained.

Section 709(c).—The Section 709(d) reporting exemption is deleted, and the hardship language is changed to require that persons or organizations alleging hardship must exhaust the relief processes provided by the Commission before applying for relief in the district court.

Section 709(d).—Deletes the present subsection, and in its place provides that the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those of such other agencies. The Commission shall furnish information obtained pursuant to subsection (c) of this section without cost to any State or local FEPC on request, except that public disclosure of such information provided on the part of such State or local agency prior to the institution of a proceeding under State or local law shall be grounds for declining to honor subsequent requests pursuant to this subsection.

Section 7. Commission Investigations

Section 710.—Comparable to present Section 710. Incorporates the provisions of section 11 of the NLRA (29 U.S.C. 161). The Commission shall have access to and the right to copy evidence of a person being investigated or proceeded against that relates to the matter under investigation or in question. It shall issue subpenas to parties on application requiring the presence and testimony of witnesses and the

production of evidence as specified in such application. Within 5 days of service, the person served may petition the Commission to revoke its subpena on grounds that the evidence sought is not relevant to the matter in question. Attendance of witnesses and the production of evidence may be required from any place in the United States or its possessions, and any Federal court with jurisdiction may enforce such subpenas by order. Witnesses may not refuse to answer questions on grounds of self incrimination, but may not be subsequently proceeded against on the basis of information thus gained. Complaints, orders and other processes may be served personally or by registered mail or telegraph, or by leaving a copy at the principal office of the person to be served. No subpena shall be issued to any party to a proceeding before the Commission until after the respondent has been served a copy of the complaint and notice of hearing under section 706(f). Witnesses and persons making depositions shall receive the same mileage and fees as witnesses and persons making depositions in the district courts.

Section 8. Selection Procedures, Apprenticeship Programs, Commission Organization

Section 703(a)(2).—Comparable to present Section 703(a)(2). Adds "or applicants for employment" after "employees."

Section 703(c)(2).—Comparable to present Section 703(c)(2). Adds "or applicants for membership" after "membership."

Section 703(h).—Comparable to present Section 703(h). Retains the seniority and merit system language, but changes the testing provisions to stipulate that such tests must be directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned. The provision prohibiting tests designed or used to discriminate on the basis of race, color, religion, national origin, or sex is retained.

Section 704(a) and (b).—Comparable to present Section 704(a) and (b). Adds 'or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs"; after "employment agency."

Section 705(a).—Comparable to present Section 705(a). Amends the Section to include "members of the Commission shall continue to serve until their successors are appointed and qualified," provided that no such member shall continue to serve for more than 60 days when the Congress is in session unless a nomination to fill the vacancy has been submitted to the Senate, or after the adjournment sine die of the session of the Senate in which such nomination was submitted. The section also adds "hearing examiners" to the appointments the Chairman may make in accordance with title 5, U.S.C. on behalf of the Commission, and provides that assignment, removal and compensation of such hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, U.S.C. Section 3105 provides for the appointment of the necessary number of hearing examiners, requires that they be assigned to cases in rotation, and stipulates that they may not be assigned duties that are inconsistent with their position as hearing examiners. Section 3344 authorizes an agency's use of hearing examiners from other agencies as selected by the Civil Service Commission if the borrowing agency is short staffed. Section 5362 states

that such hearing examiners are entitled to the pay prescribed by the Civil Service Commission for them independently of agency recommendations or ratings, in accordance with subchapter III and chapter 51 of title 5, U.S.C. Section 7521 allows removal of hearing examiners only for good cause established and determined by the Civil Service Commission on the record after hearing.

Section 705(g)(1).—Comparable to present Section 705(g)(1). Adds "and to accept voluntary and uncompensated services, notwithstanding that provisions of section 3679(b) of the Revised Statutes" after the word "individuals."

Section 705(g)(6).—Comparable to present Section 706(g)(6). Substitutes Section "715" for Section "706."

Section 713(c) and (d).—New subsections. Authorizes the Commission to delegate its powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting to such persons as the Commission may designate by regulation, with certain exceptions. The exceptions concern the power to issue cease and desist orders, the power to modify or set aside findings under subsections (i) and (k) of Section 706, certain aspects of the rule-making powers, and the power to enter into or rescind agreements with State and local agencies as provided in subsection (b) of Section 709. The Commission is specifically not authorized to provide for persons other than those referred to in section 556, subsection (b), clauses (2) and (3) of title 5, U.S.C. to conduct any hearing to which that section applies. New subsection (d) authorizes the Commission to delegate to any group of three or more of its members any or all of the powers which it may itself exercise.

Section 714.—Comparable to present Section 714. Adds section 1114 of title 18, U.S.C. (murder of Commission employees).

Section 715.—New Section, comparable in part to present Section 706. Deletes the provisions of the present Section 715, which called for a 1965 study of discrimination because of age, provides that if the Commission dismisses a charge after a preliminary investigation indicates no cause, or on grounds of lack of jurisdiction, or if after 180 days from the filing of a charge the Commission has not made a finding of no reasonable cause or entered into a conciliation agreement acceptable to the Commission and to the person aggrieved, the Commission shall notify the aggrieved party, and within 60 days of such notification such party may bring a civil action against the respondent named in the charge. The court may upon application appoint an attorney for such complainant, and may dispense with the payment of fees, costs, or security. It may also permit the Commission to intervene if it certifies that the cause is of general public importance. Upon the commencement of such action the Commission is divested of jurisdiction over the proceeding and may take no further action, except that the court may in its discretion stay further proceedings for not longer than 60 days pending termination of State or local proceedings, or the efforts of the Commission to obtain voluntary compliance. Subsections (b) and (c) retain the procedural provisions of present Section 706, subsections (f) and (g), while subsections (d), (e), and (f) duplicate Section 706, subsections (i), (j) and (k), the latter subsection modified to delete the exceptions of the Commission and the

United States in regard to attorney's fees and to change the words "prevailing party" to "prevailing plaintiff." Present subsection (h) excepting such proceedings from the provisions of 29 U.S.C. 101–115 is retained with modified language at Section 706(m).

Section 9. Commissioner's Compensation.

Title 5, U.S.C. Add "Chairman, Equal Employment Opportunity Commission" at the end of section 5314 (Level III Positions). Add "Members, Equal Employment Opportunity Commission" to clause (72) of section 5315 (Level IV Positions). Repeal clause (III) of section 5316 (the Level V slot presently occuped by Members of the Commission).

Section 10. Pending Cases

Sections 706 and 710 of the Civil Rights Act of 1964, as amended by this Act, shall not be applicable to charges filed with the Commission prior to the effective date of this Act.

Section 11. Federal Employees, Federal Contractors

Section 717(a) and (b).—New Section. All personnel actions affecting employees of applicants for employment in the competitive service of the United States or in positions of the District of Columbia Government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

The Equal Employment Opportunity Commission shall enforce the nondiscrimination provisions of subsection (a), and shall issue appropriate rules, regulations, orders, and instructions. The responsibilities of the Civil Service Commission with regard to nondiscrimination in Federal employment are transferred to the Equal Employment Opportunity Commission. This, of course, will not relieve the Civil Service Commission, the Federal agencies, or the District of Columbia, of their affirmative responsibilities to assure equal opportunity in government employment, nor transfer any functions relating thereto (as distinguished from enforcement functions).

Section 717(c).—Persons aggrieved by the final disposition of complaints may, within thirty days of receipt of notice, file a civil action in the same manner as in Section 715, in which action the head of the executive department or agency, or the District of Columbia, as appropriate, shall be the respondent.

Section 717(f).—With respect to employment discrimination by government contractors and subcontractors and federally assisted construction contractors and subcontractors, this subsection, effectively, transfers those functions of the Secretary of Labor, established pursuant to Executive Order 11246, to the Equal Employment Opportunity Commission. Under the provisions of this bill the Commission is given the statutory responsibility to carry out all such authority, functions, and responsibilities in order to enforce and implement the substantive requirements.

Section 718.—New Section. Reiterates the individual obligation of all Government agencies or officials to assure nondiscrimination in employment.

Section 12. Effective Date of Section 11

New Section 717, added by Section 11 of the Act shall become effective six months after the effective date of the Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

TITLE VII—EQUAL EMPLOYMENT OPPORTUNITY

DEFINITIONS

SEC. 701. For the purposes of this title—

(a) The term "person" includes one or more individuals, *governments*, *governmental agencies*, *political subdivisions*, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has [twenty-five] *eight* or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe or [a State or political subdivision thereof] *the District of Columbia*, (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(e) of the Internal Revenue Code of 1954: *Provided*, That during the first year after the effective date prescribed in subsection (a) of section 716, persons having fewer than one hundred employees (and their agents) shall not be considered employers, and, during the second year after such date, persons having fewer than seventy-five employees (and their agents) shall not be considered employers, and, during the third year after such date, persons having fewer than fifty employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, [or an agency of a State or political subdivision of a State,] except that such term shall include the United States Employment Service and the system of State and local employment services receiving Federal assistance.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an

organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) one hundred or more during the first year after the effective date prescribed in subsection (a) of section 716, (B) seventy-five or more during the second year after such date or fifty or more during the third year, or (C) [twenty-five] *eight* or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provision of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended:

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of

the Labor-Management Reporting and Disclosure Act of 1959, *and further includes any governmental industry, business, or activity.*

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

EXEMPTION

SEC. 702. This title shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities [or to an educational institution with respect to the employment of individuals to perform work connected with the educational activities of such institution].

DISCRIMINATION BECAUSE OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN

SEC. 703. (a) It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees *or applicants for employment* in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership *or applicants for membership*, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this title, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in these certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal opeartion of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) As used in this title, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950.

(g) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this title, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test [provided that] *which is directly related to the determination of bona fide occupational qualifications reasonably necessary to perform the normal duties of the particular position concerned: Provided, That* such test, its administration or action upon the results is not designed, intended, or used to discriminate because of race, color, religion, sex, or national origin. It shall not be an unlawful employment practice under this title for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)).

(i) Nothing contained in this title shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this title shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this title to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 704. (a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency *or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs*, to discriminate against any individual, or for a labor organization to discriminate against any

member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this title, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

(b) It shall be an unlawful employment practice for an employer, labor organization, [or employment agency] *employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs,* to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, *or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee* indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 705. (a) There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party, who shall be appointed by the President by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, beginning from the date of enactment of this title, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, *and all members of the Commission shall continue to serve until their successors are appointed and qualified: Provided, That no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.* The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and shall appoint, in accordance with the [civil service laws, such officers, agents, attorneys, and employees as it deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the Classification Act of 1949, as amended] *provisions of title 5, United States Code, governing appointments in the competitive service, such officers, agents, attorneys, hearing examiners, and*

employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of hearing examiners shall be in accordance with sections 3105, 3344, 5362, and 7521 of title 5, United States Code. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(b) A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(c) The Commission shall have an official seal which shall be judicially noticed.

(d) The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken; the names, salaries, and duties of all individuals in its employ and the moneys it has disbursed; and shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(e) The Federal Executive Pay Act of 1956, as amended (5 U.S.C. 2201–2209), is further amended—

(1) by adding to section 105 thereof (5 U.S.C. 2204) the following clause:

"(32) Chairman, Equal Employment Opportunity Commission"; and

(2) by adding to clause (45) of section 106(a) thereof (5 U.S.C. 2205(a)) the following: "Equal Employment Opportunity Commission (4)."

(f) The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this title.

(g) The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals *and to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 665(b));*

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this title such technical assistance as they may request to further their compliance with this title or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this title, to assist in such effectua-

tion by conciliation or such other remedial action as is provided by this title;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public;

(6) to refer matters to the Attorney General with recommendations for intervention in a civil action brought by an aggrieved party under section [706] *715*, or for the institution of a civil action by the Attorney General under section 707, and to advise, consult, and assist the Attorney General on such matters.

(h) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court.

(i) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(j) All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act), notwithstanding any exemption contained in such section.

[PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

[SEC. 706. (a) Whenever it is charged in writing under oath by a person claiming to be aggrieved, or a written charge has been filed by a member of the Commission where he has reasonable cause to believe a violation of this title has occurred (and such charge sets forth the facts upon which it is based) that an employer, employment agency, or labor organization has engaged in an unlawful employment practice, the Commission shall furnish such employer, employment agency, or labor organization (hereinafter referred to as the "respondent") with a copy of such charge and shall make an investigation of such charge, provided that such charge shall not be made public by the Commission. If the Commission shall determine, after such investigation, that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such endeavors may be made public by the Commission without the written consent of the parties, or used as evidence in a subsequent proceeding. Any officer or employee of the Commission, who shall make public in any manner whatever any information in violation of this subsection shall be deemed guilty of a misdeameanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned not more than one year.

[(b) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the

State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subjection at the time such statement is sent by registered mail to the appropriate State or local authority.

[(c) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State, which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

[(d) A charge under subsection (a) shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

[(e) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) (except that in either case such period may be extended to not more than sixty days upon a determination by the Commission that further efforts to secure voluntary compliance are warranted), the Commission has been unable to obtain voluntary compliance with this title, the Commission shall so notify the person aggrieved and a civil action may, within thirty days thereafter, be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such change was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public

importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (b) or the efforts of the Commission to obtain voluntary compliance.

[(f) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this title. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the plaintiff would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

[(g) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable dilligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex or national origin or in violation of section 704(a).

[(h) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 101–115), shall not apply with respect to civil actions brought under this section.

[(i) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (e), the Commission may commence proceedings to compel compliance with such order.

[(j) Any civil action brought under subsection (e) and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

[(k) In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the

costs, and the Commission and the United States shall be liable for costs the same as a private person.]

PREVENTION OF UNLAWFUL EMPLOYMENT PRACTICES

SEC. 706. (a) The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 703 or 704 of this title.

(b) Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs has engaged in an unlawful employment practice, the Commission shall serve a copy of the charge on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") and shall make an investigation thereof. Charges shall be in writing and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is no reason to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) In the case of a charge filed by or on behalf of a person claiming to be aggrieved alleging an unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall take no action with respect to the investigation of such charge before the expiration of sixty days after proceedings have been commenced under the State or local law: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the

proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by certified mail to the appropriate State or local authority.

(d) In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days: Provided, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law, unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) A charge shall be filed within one hundred eighty days after the alleged unlawful employment practice occurred and a copy shall be served upon the person against whom such charge is made as soon as practicable thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(f) If the Commission determines after attempting to secure voluntary compliance under subsection (b) that it is unable to secure from the respondent a conciliation agreement acceptable to the Commission and to the person aggrieved, which determination shall not be reviewable in any court, the Commission shall issue and cause to be served upon the respondent a complaint stating the facts upon which the allegation of the unlawful employment practice is based, together with a notice of hearing before the Commission, or a member or agent thereof, at a place therein fixed not less than five days after the serving of such complaint. Related proceedings may be consolidated for hearing. Any member of the Commission who filed a charge in any case shall not participate in a hearing on any complaint arising out of such charge, except as a witness.

(g) A respondent shall have the right to file an answer to the complaint against him and with the leave of the Commission, which shall be granted whenever it is reasonable and fair to do so, may amend his answer at any time. Respondents and the person aggrieved shall be parties and may appear at any stage of the proceedings, with or without counsel. The Commission may grant such other persons a right to intervene or to file briefs or make oral arguments as amicus curiae or for other purposes, as it considers appropriate. All testimony shall be taken under oath and shall be reduced to writing.

(*h*) *If the Commission finds that the respondent has engaged in an unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons aggrieved by such unlawful employment practice an order requiring the respondent to cease and desist from such unlawful employment practice and to take such affirmative action, including reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), as will effectuate the policies of this title: Provided, That interim earnings or amounts earnable with reasonable diligence by the aggrieved person or persons shall operate to reduce the backpay otherwise allowable. Such order may further require such respondent to make reports from time to time showing the extent to which he has complied with the order. If the Commission finds that the respondent has not engaged in any unlawful employment practice, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent and the person or persons alleged in the complaint to be aggrieved an order dismissing the complaint.*

(*i*) *After a charge has been filed and until the record has been filed in court as hereinafter provided, the proceeding may at any time be ended by agreement between the Commission and the parties for the elimination of the alleged unlawful employment practice, approved by the Commission, and the Commission may at any time, upon reasonable notice, modify or set aside, in whole or in part, any finding or order made or issued by it. An agreement approved by the Commission shall be enforceable under subsection (k) and the provisions of that subsection shall be applicable to the extent appropriate to a proceeding to enforce an agreement.*

(*j*) *Findings of fact and orders made or issued under subsection (h) or (i) of this section shall be determined on the record.*

(*k*) *The Commission may petition any United States court of appeals within any circuit wherein the unlawful employment practice in question occurred or wherein the respondent resides or transacts business for the enforcement of its order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall cause notice thereof to be served upon the parties to the proceeding before the Commission, and thereupon shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief, restraining order, or other order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commismission. No objection that has not been urged before the Commission, its member, or agent, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material*

and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, its member, or its agent, the court may order such additional evidence to be taken before the Commission, its member, or its agent, and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendatons, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code. Petitions filed under this subsection shall be heard expeditiously.

(l) Any party aggrieved by a final order of the Commission granting or denying, in whole or in part, the relief sought may obtain a review of such order in any United States court of appeals in the circuit in which the unlawful employment practice in question is alleged to have occurred or in which such party resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the Court to the Commission (and to the other parties to the proceeding before the Commission) and thereupon the Commission shall file in the court the certified record in the proceeding as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (k), the findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and the court shall have the same jurisdiction to grant such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission. The commencement of proceedings under this subsection or subsection (k) shall not, unless ordered by the court, operate as a stay of the order of the Commission.

(m) The provisions of the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (47 Stat. 70 et seq.; 29 U.S.C. 101–115), shall not apply with respect to (1) proceedings under subsection (k), (l), or (o) of this section, (2) proceedings under section 707 of this title, or (3) proceedings under section 715 of this title.

(n) The Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court of the United States pursuant to this title. All other litigation affecting the Commission, or to which it is a party, shall be conducted by the General Counsel of the Commission.

(o) Whenever a charge is filed with the Commission pursuant to subsection (b) and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to preserve the power of the Commission to grant effective relief in the proceeding the Commission may bring an action for appropriate temporary or preliminary relief pending its final disposition of such charge, in the United States district court for any judicial district in the State in which the unlawful employment practice concerned is alleged to have been committed, or the judicial district in which the aggrieved person would have been employed but for the alleged unlawful employment practice, but, if the respondent is not found within any such judicial district, such an action may be brought in the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a judicial district in which such an action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law. Rule 65 of the Federal Rules of Civil Procedure, except paragraph (a) (2) thereof, shall govern proceedings under this subsection.

SEC. 707. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this title, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the

hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Any record or paper required by section 709(c) of this title to be preserved or maintained shall be made available for inspection, reproduction, and copying by the Commission, the Attorney General, or his representative, upon demand in writing directed to the person having custody, possession, or control of such record or paper. Unless otherwise ordered by a court of the United States, neither the Commission, the Attorney General, nor his representative shall disclose any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress or any committee thereof, or to a governmental agency, or in the presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a demand is made or in which a record or paper so demanded is located, shall have jurisdiction to compel by appropriate process the production of such record or paper.

(d) Effective on the date of enactment of the Equal Employment Opportunities Enforcement Act, the functions of the Attorney General and the Acting Attorney General, as the case may be, under this section shall be transferred to the Commission, together with such personnel, property records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall thereafter carry out such functions in the manner set forth in subsections (e) and (f) of this section.

(e) In all suits commenced pursuant to this section prior to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America or the Attorney General or Acting Attorney General, as appropriate.

(f) Subsequent to the date of enactment of the Equal Employment Opportunities Enforcement Act of 1971, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission: Provided, That all

such actions shall be in accordance with the procedures set forth in section 706, including the provisions for enforcement and appellate review contained in subsections (k), (l), (m), and (n) thereof.

EFFECT ON STATE LAWS

SEC. 708. Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

INVESTIGATIONS, INSPECTIONS, RECORDS, STATE AGENCIES

SEC. 709. (a) In connection with any investigation of a charge filed under section 706, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this title and is relevant to the charge under investigation.

(b) The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this title and within the limitation of funds appropriated specifically for such purpose, *engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and* utilize the services of such agencies and their employees and, notwithstanding any other provision of law, may [reimburse] *pay by advance or reimbursement* such agencies and their employees for services rendered to assist the Commission in carrying out this title. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements [and under which no person may bring a civil action under section 706 in any cases or class of cases so specified,] or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this title.

[(c) Except as provided in subsection (d), every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom, as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor

organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applications were received, and shall furnish to the Commission, upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may (1) apply to the Commission for an exemption from the application of such regulation or order, or (2) bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief.]

(c) Every employer, employment agency, and labor organization subject to this title shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this title or the regulation or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purpose of this title, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which such applicants were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply.

[(d) The provisions of subsection (c) shall not apply to any employer, employment agency, labor organization, or joint labor-management committee with respect to matters occurring in any State or political subdivision thereof which has a fair employment practice law during any period in which such employer, employment agency, labor organization, or joint labor-management committee is subject to such law, except that the Commission may require such notations on records which such employer, employment agency, labor organization, or joint labor-management committee keeps or is required to keep as are necessary because of differences in coverage or methods of enforcement between the State or local law and the provisions of this title. Where an employer is required by Executive Order 10925, issued March 6, 1961, or by any other Executive order prescribing fair employment practices for Government contractors and subcontractors, or by rules or regulations issued thereunder, to file reports relating to his employment practices with any Federal agency or committee, and he is substantially in compliance with such requirements, the Commission shall not require him to file additional reports pursuant to subsection (c) of this section.]

(d) In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish, upon request and without cost to any State or local agency charged with the administration of a fair employment practice law, information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient ageney prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this title involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

[INVESTIGATORY POWERS

[SEC. 710. (a) For the purposes of any investigation of a charge filed under the authority contained in section 706, the Commission shall have authority to examine witnesses under oath and to require the production of documentary evidence relevant or material to the charge under investigation.

[(b) If the respondent named in a charge filed under section 706 fails or refuses to comply with a demand of the Commission for per-

mission to examine or to copy evidence in conformity with the provisions of section 709(a), or if any person required to comply with the provisions of section 709 (c) or (d) fails or refuses to do so, or if any person fails or refuses to comply with a demand by the Commission to give testimony under oath, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, have jurisdiction to issue to such person an order requiring him to comply with the provisions of section 709 (c) or (d) or to comply with the demand of the Commission, but the attendance of a witness may not be required outside the State where he is found, resides, or transacts business and the production of evidence may not be required outside the State where such evidence is kept.

[(c) Within twenty days after the service upon any person charged under section 706 of a demand by the Commission for the production of documentary evidence or for permission to examine or to copy evidence in conformity with the provisions of section 709(a), such person may file in the district court of the United States for the judicial district in which he resides, is found, or transacts business, and serve upon the Commission a petition for an order of such court modifying or setting aside such demand. The time allowed for compliance with the demand in whole or in part as deemed proper and ordered by the court shall not run during the pendency of such petition in the court. Such petition shall specify each ground upon which the petitioner relies in seeking such relief, and may be based upon any failure of such demand to comply with the provisions of this title or with the limitations generally applicable to compulsory process or upon any constitutional or other legal right or privilege of such person. No objection which is not raised by such a petition may be urged in the defense to proceeding initiated by the Commission under subsection (b) for enforcement of such a demand unless such proceeding is commenced by the Commission prior to the expiration of the twenty-day period, or unless the court determines that the defendant could not reasonably have been aware of the availability of such ground of objection.

[(d) In any proceeding brought by the Commission under subsection (b), except as provided in subsection (c) of this section, the defendant may petition the court for an order modifying or setting aside the demand of the Commission.]

INVESTIGATORY POWERS

SEC. 710. For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 11 of the National Labor Relations Act (49 Stat. 455; 29 U.S.C. 161) shall apply: Provided, That no subpena shall be issued on the application of any party to proceedings before the Commission until after the Commission has issued and caused to be served upon the respondent a complaint and notice of hearing under subsection (f) of section 706.

NOTICES TO BE POSTED

SEC. 711. (a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this title and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

VETERANS' PREFERENCE

SEC. 712. Nothing contained in this title shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

RULES AND REGULATIONS

SEC. 713. (a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this title. Regulations issued under this section shall be in conformity with the standards and limitations of the Administrative Procedure Act.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this title if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this title regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this title.

(c) Except for the powers granted to the Commission under subsection (h) of section 706, the power to modify or set aside its findings, or make new findings, under subsections (i) and (k) of section 706, the rulemaking power as defined in subchapter II of chapter 5 of title 5, United States Code, with reference to general rule as distinguished from rules of specific applicability, and the power to enter into or rescind agreements with State and local agencies, as provided in

subsection (b) of section 709, under which the Commission agrees to refrain from processing a charge in any cases or class of cases or under which the Commission agrees to relieve any person or class of persons in such State or locality from requirements imposed by section 709, the Commission may delegate any of its functions, duties, and powers to such person or persons as the Commission may designate by regulation, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: Provided, That nothing in this subsection authorizes the Commission to provide for persons other than those referred to in clauses (2) and (3) of subsection (b) of section 556 of title 5 of the United States Code to conduct any hearing to which that section applies.

(d) The Commission is authorized to delegate to any group of three or more members of the Commission any or all of the powers which it may itself exercise.

FORCIBLY RESISTING THE COMMISSION OR ITS REPRESENTATIVES

SEC. 714. The provisions of [section 111] *sections 111 and 1114* title 18, United States Code, shall apply to officers, agents, and employees of the Commission in the performance of their official duties.

[SPECIAL STUDY BY SECRETARY OF LABOR

[SEC. 715. The Secretary of Labor shall make a full and complete study of the factors which might tend to result in discrimination in employment because of age and the consequences of such discrimination on the economy and individuals affected. The Secretary of Labor shall make a report to the Congress not later than June 30, 1965, containing the results of such study and shall include in such report such recommendations for legislation to prevent arbitrary discrimination in employment because of age as he determines advisable.]

CIVIL ACTIONS BY PERSONS AGGRIEVED

SEC. 715. (a) If (1) the Commission determines that there is no reasonable cause to believe the charge is true and dismisses the charge in accordance with section 706(b), (2) finds no probable jurisdiction and dismisses the charge, or (3) within one hundred and eighty days after a charge is filed with the Commission, or within one hundred and eighty days after expiration of any period of reference under section 706 (c) or (d), the Commission has not either (i) issued a complaint in accordance with section 706(f), (ii) determined that there is not reasonable cause to believe the charge is true and dismissed the charge in accordance with section 706(b) or found no probable jurisdiction and dismissed the charge, or (iii) entered into a conciliation agreement acceptable to the Commission and to the person aggrieved in accordance with section 706(f) or an agreement with the parties in accordance with section 706(i), the Commission shall so notify the person aggrieved and within sixty days after the giving of such notice a civil action may be brought against the respondent named in the charge (1) by the person claiming to be aggrieved, or (2) if such

charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complaintant and in such circumstances as the court may deem just, the court may appoint an attorney for such complaintant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission to intervene in such civil action if it certifies that the case is of general public importance. Upon the commencement of such civil action, the Commission shall be divested of jurisdiction over the proceeding and shall take no further action with respect thereof: Provided, That, upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending termination of State or local proceedings described in subsection (c) or (d) or the efforts of the Commission to obtain voluntary compliance.

(b) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this section. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, or in the judicial district in which the plaintiff would have been employed but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28 of the United States Code, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought. Upon the bringing of any such action, the district court shall have jurisdiction to grant such temporary or preliminary relief as it deems just and proper.

(c) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without backpay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice). Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the backpay otherwise allowable. No order of the court shall require the admission or reinstatement of an individual as a member of a union or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any backpay, if such individual was refused admission, suspended, or expelled or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 704(a).

(d) In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under subsection (a), the Commission may commence proceedings to compel compliance with such order.

(e) Any civil action brought under subsection (a) and any proceedings brought under subsection (d) shall be subject to appeal as provided in sections 1291 and 1292, title 28, United States Code.

(f) In any action or proceeding under this section, the court, in its discretion, may allow the prevailing plaintiff a reasonable attorney's fee as part of the costs.

EFFECTIVE DATE

SEC. 716. (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c) The President shall, as soon as feasible after the enactment of this title, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this title to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this title when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to the title.

NONDISCRIMINATION IN FEDERAL GOVERNMENT EMPLOYMENT

SEC. 717.[1] (a) All personnel actions affecting employees or applicants for employment in the competitive service (as defined in section 2102 of title 5 of the United States Code) or employees or applicants for employment in positions with the District of Columbia government covered by the Civil Service Retirement Act shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) The Equal Employment Opportunity Commission shall have authority to enforce the provision of subsection (a) and shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities hereunder, and the head of each executive department and agency and the appropriate officers of the District of Columbia shall comply with such rules, regulations, orders, and instructions: Provided, That such rules and regulations shall provide that an employee or applicant for employment shall be notified of any final action taken on any complaint filed by him thereunder.

(c) Within thirty days of receipt of notice given under subsection (b), the employee or applicant for employment, if aggrieved by the final disposition of his complaint, may file a civil action as provided in section 715, in which civil action the head of the executive depart-

[1] Effective 6 months after date of enactment.

ment or agency, or the District of Columbia, as appropriate, shall be respondent.

(d) The provisions of section 715 shall govern civil actions brought hereunder.

(e) All functions of the Civil Service Commission which the Director of the Bureau of the Budget determines relate to nondiscrimination in government employment are transferred to the Equal Employment Opportunity Commission.

(f) All authority, functions, and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by Government contractors and subcontractors and nondiscrimination in federally assisted costruction contracts are transferred to the Equal Employment Opportunity Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available or to be made available in connection with the functions transferred to the Commission hereby as may be necessary to enable the Commission to carry out its functions pursuant to this subsection, and the Commission shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order.

EFFECT UPON OTHER LAW

SEC. 718. Nothing contained in this Act shall relieve any government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution, statutes, and Executive orders.

§ 5316. Positions at level V.

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $36,000:

* * * * * * *

[(111) Members, Equal Employment Opportunity Commission (4).]

* * * * * * *

MINORITY VIEWS ON H.R. 1746

We all agree that, if equal employment opportunity for all Americans is to become a reality, the Equal Employment Opportunity Commission should be given enforcement powers. We are convinced, however, that H.R. 1746 will not accomplish this goal, and thus we must oppose it.

First and foremost, on the premise that anyone charged with violating the law is innocent until proven guilty, we believe that enforcement of our laws can best be effectuated through our courts.

Additionally, we fear that, in view of the estimated 18-month to two-year backlog that currently exists at the EEOC, the intent of H.R. 1746 to expand the EEOC's jurisdiction will serve only to retard and frustrate the purposes and objectives of the Equal Employment Opportunity Act.

Under the procedures of the Committee bill, upon receipt of a charge, the Commission is required to investigate and to find reasonable cause before issuing a formal complaint. In effect, this finding is a presumption of the guilt of the defendant, which subtly shifts the burden of proof from the plaintiff to the defendant. Thus, in practice, if not by law, the defendant is faced with the burden of proving his innocence.

During Committee sessions, we offered amendments to assure that title VII of the Civil Rights Act would be enforced, and that enforcement would be fair and impartial. Our amendments, which were rejected, would permit the EEOC attorneys, if they are unsuccessful in their conciliation and if they found reasonable cause to believe that a violation of the law has taken place, to seek enforcement in Federal district courts.

I. The Major Issue

As indicated above, the most significant issue that separates the majority of the committee from the minority is not whether the EEOC should be given enforcement authority. Rather, the issue is: What procedures will insure the most effective enforcement of the substantive provisions of title VII of the Civil Rights Act of 1964.

By providing the EEOC with authority to issue cease and desist and other remedial orders, the Committee bill would transform this agency into a quasi-judicial body very similar to the National Labor Relations Board.

In the next section we explain and justify our belief that the court approach will be more effective and more expeditious than the administrative approach. We are compelled, however, to point out as well that the authority provided in H.R. 1746 ignores and denies basic American principles.

Under our system of justice, a person charged with violating the law is presumed innocent until proved guilty. In practical effect the Committee bill creates a system that presumes persons charged with certain law violations are guilty until proved innocent. We contend that the EEOC has attained an image as an advocate of civil rights, and properly so. For this very reason, we submit that it cannot be an impartial arbiter of the law. An advocate, by nature, represents one side of an issue. How can he then be asked to apply the law without prejudice?

THE JUDICIAL APPROACH

The direct judicial approach offers greater advantages than the administrative cease and desist approach. While both methods would involve an adversary proceeding before a finder of fact, in the judicial approach the original finder of fact would be the federal district court judge as compared to a hearing officer who is a civil service employee, under the administrative approach.

There are substantial reasons for supporting direct resort to the courts. They include:

A. Timeliness of Relief and Remedy

Contrary to the proponents of the "cease and desist" approach, the district court approach is clearly preferable because relief can be more quickly granted. The pertinent yardstick is the amount of time an aggrieved person must wait before he is afforded relief. Empowering the EEOC to bring court suits will greatly facilitate its ability to implement the law without delay and to bring effective relief to victims of discrimination. If the EEOC prevails before the court, it is entitled to an immediate injunction and other relief to bring about a rapid end to the discriminatory practices. In many instances a relatively simple proof would allow the EEOC to obtain a preliminary injunction pending a full trial of the case.

A close examination of the time factors involved in processing charges before the National Labor Relations Board (which was the model for formulating the enforcement powers given to the EEOC by the Committee bill) and the district courts conclusively establishes that quicker relief can be achieved when the direct court approach is utilized.

It is significant that the Special Subcommittee on Labor opened hearings on May 6, 1971, on a bill (H.R. 7152) to expedite the processes of the National Labor Relations Board, and in the explanatory sheet it distributed it discussed the delay incurred in the six stages of the administrative process which culminated in a court enforced order in the Court of Appeals. The delay was summarized as follows:

> In sum, it can easily take 2½ years from the time a worker walks into a regional Labor Board office with a charge that he has been discharged illegally until the time a court of appeals finally issues an order that he be reinstated to his job with back pay.

Even the 2½ year figure cited appears unduly optimistic in light of recent testimony given before the Special Subcommittee on Labor on

H.R. 7152, on May 12, 1971, by Frank W. McCulloch, former Chairman of the NLRB, about the length of delay between the issuance of a Board decision and a court order. He stated:

> In operation, the lack of such a provision [referring to a self-enforcing provision] has resulted in the build-up of a median time interval of 630 days in enforcement cases, as previously noted, from Board decision to a Court order which for the first time applies the sanctions of the law to a non-complying respondent.

When these time factors are added up, the 18–24 month backlog currently existing at EEOC, the time needed for an administrative proceeding and review by the Commission, plus the 630 day figure currently required to get court enforcement (using the NLRB figure), 3½ to 4 years would appear to be a more correct approximation of the time involved in getting enforcement through the administrative cease and desist approach.

In striking contrast, the 1970 Annual Report of the Director of the Administrative Office of the United States Courts states that ten months was the median time interval from issue to trial for non-jury trials completed in United States District Courts in 1970. Even assuming time for issuance of a decision such forum would clearly be quicker. Moreover, the district courts located in those states which have most of the charges of employment discrimination often have better time records in case handling.

An examination of the Fourth Annual Report of the Equal Employment Opportunity Commission, submitted on July 30, 1970, shows that the top ten states in terms of the number of charges of employment discrimination recommended for investigation are: Texas (1232 charges), Louisiana (1007), Florida (1000), Alabama (734), Tennessee (672), California (546), Georgia (519), Pennsylvania (501), Illinois (334) and New Jersey (306). As federal district courts in such metropolitan areas as New York City and Philadelphia would obviously be much busier than those in less populolus areas, the case handling time factor should therefore, be correlated with the areas where most charges originate.

The median time interval in months for non-jury trials in such states discloses the following:

Texas:
- Northern District, 4 months, Dallas.
- Eastern District, 5 months, Beaumont.
- Southern District, 12 months, Houston.
- Western District, 3 months, San Antonio.

Louisiana:
- Eastern District, 13 months, New Orleans.
- Western District, 13 months, Shreveport.

Florida:
- Northern District, 8 months [1], Tallahassee.
- Middle District, 12 months, Jacksonville.
- Southern District, 9 months, Miami.

[1] Jury and non-jury trials total.

Alabama:
Northern District, 8 months, Birmingham.
Middle District, 3 months,[1] Montgomery.
Southern District, 11 months, Mobile.
Tennessee:
Eastern District, 4 months, Knoxville.
Middle District [2], Nashville.
Western District, 8 months, Memphis.
California:
Northern District, 23 months, San Francisco.
Eastern District, 21 months,[1] Sacramento.
Central District, 10 months, Los Angeles.
Southern District [3], San Diego.
Georgia:
Northern District, 4 months, Atlanta.
Middle District, 4 months, Macon.
Southern District, 1 month, Savannah.
Pennsylvania:
Eastern District, 36 months, Philadelphia.
Middle District, 21 months [1], Scranton.
Western District, 12 months, Pittsburgh.
Illinois:
Northern District, 11 months, Chicago.
Eastern District, 12 months [1] East St. Louis.
Southern District, 11 months [1], Peoria.
New Jersey: 1 month, Newark.

Of the 29 district courts represented in the above statistics, 21 courts had a median time of 12 months or less; 8 courts had median trial completion times of 6 months or less.

In hearings last April before the House Committee on Appropriations, discussing the EEOC budget request for FY 1971, Chairman Brown noted that EEOC's backlog "now means an average delay of 18 months to 2 years before the Commission can complete action on a complaint." How much longer would this interval be extended if at the end thereof, the Commission then had to begin its administrative proceedings followed by resort to the appellate courts? In his testimony before the General Subcommittee on Labor recently, Chairman Brown noted that "during the first seven and a half months of this Fiscal Year, 14,644 charges were filed with the Commission, *a number greater than the number received in all of last Fiscal Year.*" (Emphasis supplied.) He also stated that as of February 20, 1971, the backlog of charges pending before the Commission numbered 25,195.

The increased caseload and backlog of EEOC alone not only undermines but clearly refutes the contention that the administrative process would bring quicker relief. Add to this backlog the increased workload that would be generated by the additional jurisdiction bestowed on EEOC by the Committee bill (jurisdiction over state and local

[1] Jury and non-jury trials—total.
[2] No figure given: only one jury trial reported completed in fiscal year 1970.
[3] No figure given: only one jury trial reported completed in fiscal year 1970.

employees, transfer of the Office of Federal Contract Compliance to EEOC, transfer of pattern and practice suits to EEOC from the Justice Department, transfer of authority over discrimination among federal employees to EEOC from the Civil Service Commission, jurisdiction extended to employers with 8 employees as compared to the present 25 employec limitation) conclusively establishes that claims of quicker remedies through the administrative "cease and desist" process are more fiction than fact.

Finally, we suggest that a further impediment to timely action is presented by virtue of the fact that under the administrative approach the decision to grant relief can be made only by the Commission. An EEOC attorney in the field could investigate, and he could attempt conciliation; but there would be only one facility available to issue a cease and desist order—the Commission in Washington. Through the judicial approach, EEOC attorneys would have access to our 93 Federal district courts for enforcement.

It seems eminently more sensible to us to proceed in a forum where not only can preliminary relief be made available at the outset, but, if circumstances warrant, further relief can be obtained as the case proceeds, with *permanent relief* embodied in a self-enforcing decree issuing at the culmination of trial. Thus we will have avoided the multiplicity of opportunities for delay that are inherent in the cease-and-desist approach, and aggrieved parties will have their remedy at the earliest possible moment.

This alternative saves the best features of the independent agency approach—expertise and political autonomy—while avoiding the problems that arise when an active enforcement stance must be accommodated within a structure that contemplates quasi-judicial neutrality. The problem title VII seeks to correct is not one susceptible to the kind of policy balancing that is usual in the administration of law regulating utilities or other situations involving competing interests. Racial discrimination does not occupy the status of an "interest" under our system of law. It is a grave injustice which should be eliminated in as quick and efficient a manner as possible.

B. Greater Prestige of Federal Judges

The appropriate forum to resolve civil rights questions, questions of employment discrimination as well as such matters as public accommodations, school desegregation, fair housing, and voting rights, is a court. Civil rights issues usually arouse strong emotions. United States district court proceedings provide procedural safeguards; Federal judges are well known in their areas and enjoy great respect; the forum is convenient for the litigants and is impartial; the proceedings are public, and the judge has power to resolve the problem and fashion a complete remedy.

C. Evidentiary Matters

The district court approach has a great advantage over an administrative hearing procedure in securing the needed evidence. The Federal Rules of Civil Procedure, with respect to discovery, would greatly facilitate the collection of evidence for trial. Under a cease-and-desist approach, the rather cumbersome method of enforcing subpoenas severely inhibits the acquisition of evidence for trial, making the hearing

very dependent upon the investigation. Experience has shown that investigations, which are aimed simply at developing enough evidence to find reasonable cause, fall short of providing adequate evidence for obtaining a decision where the standard, as it is in the courts, is a preponderance of evidence on the record. Discovery procedures take less time than administrative fact-gathering techniques, and the contempt powers of the court operate to inhibit any intimidation of witnesses, which is a rather difficult problem that is often real, but seldom apparent.

II. Detrimental Provisions and Critical Omissions in the Committee Bill

A. As elaborated or hereafter, we conclude that those provisions in the Committee bill dealing with the transfer of the Office of Federal Contract Compliance (OFCC), the extension of EEOC jurisdiction to state and local employees, and the transfer of pattern and practice suits from the Justice Department to the EEOC are detrimental to the major objective of this bill, which is to provide an enforcement power to effectuate appropriate and timely remedies for discriminatory employment conditions.

1. Section 11 of the Committee bill would transfer the function of the Office of Federal Contract Compliance under Executive Order 11246 from the Department of Labor to the Equal Employment Opportunity Commission. We oppose this transfer because: OFCC has made commendable progress in achieving the Executive Order's goal of equal employment opportunity by government contractors; the transfer would create a hiatus in the administration of these crucial programs and add an insurmountable administrative burden to an already overburdened agency; and the administration of the programs will prove unworkable because the EEOC would be assuming a dual role of contract compliance and the regulatory function of processing complaints of employment discrimination.

OFCC is charged with the administration of the nondiscrimination and affirmative action provisions of the Executive Order which relate to Federal contractors and Federally-assisted construction contractors. We feel that this function falls logically within the Department of Labor. The present location of OFCC permits it to benefit directly from the experience gained by the Labor Department in the administration of other workplace standards and anti-discrimination programs which are enforced by similar sanctions as well as its general expertise in labor-management relations. The Department also includes the Manpower Administration, thus making it possible for OFCC to include job training efficiently in the development of useful affirmative action programs.

While OFCC and EEOC share the goal of promoting the civil rights of minority workers, the programs they are presently administering are considerably different. EEOC acts, following an individual complaint, to redress instances of actual job discrimination. OFCC works with Government contractors to insure equal employment opportunity. The merging of these two distinct functions in a single agency will create serious problems, and such combination will

undoubtedly work to the detriment of both programs. Incidentally, it should be pointed out, that once EEOC is given enforcement powers, federal contractors will be, just as other employers, subject to the processes and remedies of the EEOC in addition to those exercised by OFCC.

The EEOC presently has a tremendous backlog of pending charges. The addition of some form of enforcement powers will greatly increase its administrative responsibilities. We feel that it is simply unrealistic to expect EEOC simultaneously to shoulder the burden of OFCC's program. If the Committee's bill is enacted, we foresee a significant disruption of the compliance program. Regarding such transfer Chairman Brown of the EEOC appeared before the General Subcommittee on Labor and stated:

> Given the tremendous backlog of charges pending now with the Commission—25,195 as of February 20, 1971—the additioanl work which would have to be undertaken by the Commission if it gets enforcement powers, the difficulty of obtaining adequate funding for the Commission, and finally, the tremendous administrative difficulties embodied in such a transfer, I am doubtful as to the desirability of transferring OFCC at this time. Specifically, the administrative difficulties are by far the greatest in my view; almost insurmountable.

The primary responsibility for the implementation of the Executive Order as it relates to government procurement rests and must remain, with the individual Executive agencies. The coordination of the goals of equal employment opportunity with the needs of these agencies to obtain goods and services can be most effectively accomplished from within the Executive Branch of Government. Indeed, the experience of the various Presidential Committees formerly charged with the compliance program indicates the inherent difficulties in placing the operations of the agencies under the control of a separate body, such as the EEOC.

2. The Extension of Coverage to State and Local Employees. Apart from adding to the EEOC's already swollen workload which is treated in more detail in other portions of this report, we believe this area helps substantiate our earlier conclusion that the Federal courts are the proper forum. If its jurisdiction is thus extended, we will have the anomaly of a federal administrative agency interposing itself in the internal administration of state and local government. The NLRB does not have such jurisdiction over employees of state and local governments in matters involving discrimination in employment and we see no justification for extending such jurisdiction to the EEOC. It would be inconsistent with our system of division of governmental powers to subject state and local authorities to the cease-and-desist power of a federal commission.

3. Transfer of Pattern and Practice Suits to EEOC. We oppose the provisions of the Committee bill which would transfer from the Department of Justice to the EEOC the authority to try pattern and practice suits because it involves not only the transfer of authority from one agency to another, but also the elimination of the judicial remedies now provided by Section 707 of the Civil Rights Act. It will

unquestionably hinder the achievement of equal employment opportunity. In effect, the Committee bill, will merely delay the achievement of any remedy to groups of discriminatees by interposing yet another obstacle, the additional forum of the EEOC, which after reaching its conclusion in such matters, under its hearing and cease and desist procedures, must ultimately petition a Federal Circuit Court of Appeals for enforcement. Certainly, it is in this area, that suits are frequently initiated as class actions because of the numbers of employees involved and the amounts of backpay due, which will usually require the authority of a Court enforced decree.

Between July, 1965, when title VII took effect and April 2, 1971, the Civil Rights Division of the Department of Justice filed some 60 suits on the basis of Section 707. The Division has had a high degree of success in litigating these cases, and principles established in them, at the trial or appellate level, have been useful to complaining private litigants and to other federal agencies. Six Circuit Courts have rendered decisions favorable to the Division's position and to date the Division has prevailed in each pattern and practice suit that has come to final decision. Such a record warrants a retention of pattern and practice suits in the Department of Justice. Some of the reasons for its success are the fact that it has access to the investigative resources of the Federal Bureau of Investigation—resources which have proved invaluable in ascertaining the facts and marshaling them for evidence in pattern or practice suits. Moreover, the United States Attorneys, who are the Department's field representatives located in every judicial district in the nation, have a thorough knowledge of local situations and are in a position to render valuable counsel and assistance.

4. Recovery of Court Costs Limited to "Prevailing Plaintiff." Under existing law, the Court has the discretion to allow the "prevailing party" a reasonable attorney's fee as part of the costs for litigation proceeding under this title. The Committee bill eliminated the term "prevailing party" and substitutes the term "prevailing plaintiff". No justification for such change was presented in hearings on the bill; it is contrary to the rule in most jurisdictions; and it may constitute an incentive for harassment suits and a "disincentive" to respondents not to resist ill-founded claims.

B. Critical Omissions of the Committee Bill. At the subcommittee and committee levels, we attempted to amend the Committee bill because it lacked certain procedural and due process safeguards. These deficiencies include: failure to provide for a reasonable statute of limitations on backpay; failure to provide for service of a charge on the named respondent within a reasonable time; failure to provide that title VII, as amended, shall be the exclusive remedy. We believe these omissions are critical and should be called to the attention of the House for we expect to make further attempts on the House floor to provide minimal due process standards in the Committee bill.

1. Statute of Limitations. Under the Committee bill, the time period in which individual charges of employment discrimination must be filed has been extended from 90 days to 180 days from the date of the alleged discriminatory conduct; this is identical to the statute of limitations under the National Labor Relations Act. We concur in such extension. However, testimony in the hearings indicates that pattern or practice suits now brought by the Justice Department are not sub-

ject to such limitation. Civil suits in most jurisdiction are subject to statutes of limitations ranging usually between two or three years. Under existing law, recovery of backpay in such pattern or practice suits can extend back to 1965, the effective date of enactment of the Civil Rights Act of 1964. Thus potential respondents whether they be employers, labor organizations or employment agencies may be subject to enormous monetary penalties in the absence of a definite limitation. To avoid the litigation of stale charges and to preclude respondents from being subject to indefinite liabilities, it is clear that a precise statute of limitations is needed. In view of the tremendous backlog currently existing at the EEOC, and the failure to require a prompt serving of the charge on named respondents as discussed hereafter, equitable principles require a limitation on liability.

Our amendment, which failed by a tie vote, inserted language which provided that no order shall include backpay or liability which accrued more than two years prior to the filing of a charge with the Commission. In view of the equitable principles on which such amendment is based, it is deserving of bipartisan support.

2. Service of the Charge. At the hearings of this bill, it was brought out that in most cases, employers were not notified about the filing of a charge until months later, not uncommonly a year or more. As the Committee bill failed to remedy this problem, we sought to amend it to require service on the named respondent within 5 days after the filing of a charge. In the discussion that ensued it was emphasized that the 5 day figure was not a magic number and that any reasonable time period would be acceptable. Nevertheless, the Committee rejected the 5 day requirement and no reasonable alternative was offered.

It seems patent that failure to require timely notice violates all concepts of due process. Under the National Labor Relations Act, a charge is not deemed effectively filed for purposes of the 6 months statute of limitation *until* service of a copy of the charge on the respondent. In view of specific abuses regarding service of charges under title VII, a specific requirement for service on the respondent within a specified time period (5 to 7 days) is a prerequisite to maintaining minimum standards of due process.

3. Failure to Make Title VII an Exclusive Federal Remedy. Despite the enactment of title VII of the Civil Rights Act, charges of discriminatory employment conditions may still be brought under prior existing federal statutes such as the National Labor Relations Act and the Civil Rights Act of 1866. In view of the comprehensive prohibitions against discrimination contained in title VII, and the intent of the Committee bill to consolidate procedures and remedies under one agency, it would be consistent to make title VII the exclusive remedy. No public interest is served in continuing to permit a multiplicity of statutes or forums to deal with discrimination in employment. However, our attempt to amend the Committee bill to make title VII an exclusive remedy (except for pattern or practice suits) was rejected. In our view, the failure to make this an exclusive remedy merely encourages an individual who has lost his case in one forum under one statute to relitigate his case in still another forum under another federal statute. Under NLRB procedures and the proposed

EEOC procedures, the burden as well as the cost of prosecuting charges is borne by the respective agencies, and therefore, the taxpayer.

CONCLUSIONS

In essence, the Committee bill will result in interposing an additional obstacle in the nature of an administrative forum, between the aggrieved party and the effective judicial relief which can be achieved by a court enforced order. For the reasons previously documented, direct judicial relief can be obtained more quickly and thus more effectively through the federal district courts.

Secondly, and equally as important, the massive expansion of jurisdiction and the transferring of various programs to the EEOC at a time when the agency is struggling to control a burgeoning backlog of cases, will further hamstring efforts to bring meaningful and timely relief to persons aggrieved by discriminatory employment conditions. At a time when Congress should be directing its efforts solely to helping the EEOC become a more effective agency by giving it access to judicial enforcement, the committee bill represents a step backward and will thrust the EEOC into an administrative quagmire which can only delay the attainment of a reasonable standard of operational efficiency that Congress should expect and demand.

Lastly, the failure of the committee bill to include such minimal due process requirements as the prompt notification to named respondents, a reasonable statute of limitations as to backpay and other liability, and failure to make this an exclusive remedy, are critical omissions whose inclusion we deem vital to meet due process standards.

ALBERT H. QUIE.
JOHN N. ERLENBORN.
JOHN DELLENBACK.
MARVIN L. ESCH.
EDWIN D. ESHLEMAN.
WILLIAM A. STEIGER.
ORVAL HANSEN.
EARL B. RUTH.
EDWIN B. FORSYTHE.
VICTOR V. VEYSEY.
JACK F. KEMP.

SEPARATE VIEWS OF REPRESENTATIVE GREEN OF OREGON

I should like to dissent to one provision in the bill.

The new setcion 717(f), in connection with the transfer of the Office of Federal Contract Compliance to the EEOC, provides that all authority, functions and responsibilities vested in the Secretary of Labor pursuant to Executive Order 11246 relating to nondiscrimination in employment by goverument contractors and subcontractors and nondiscrimination in federally assisted construction contracts are transferred to the EEOC . . . and the Commissioner shall hereafter carry out all such authority, functions, and responsibilities pursuant to such order.

The EEOC will operate under two authorities—Exeeutive Order 11246 as adopted by subsection (f), and Congressional enactments amended title VII of the Civil Rights Act. Those authorities are divergent in important ways. For example:

(1) Under title VII an individual may sue the offending party after his complaint has been with the EEOC for 60 days.

Under the Executive Order an individual may not sue but may seek debarment of the contraet.

(2) Under title VII, EEOC ean initiate an investigation only after the filing of a diserimination complaint. The company is entitled to judieial review if it should feel that the investigation is unwarranted.

Under the Executive Order eontract review can be conducted at will. A decision to investigate is not subject to judicial review.

(3) Under Title VII EEOC is specifically prohibited from public diselosure of a complaint.

Under the Executive Order there is authority to publish the names of persons accused of discrimination.

(4) Under title VII (See. 703(j)) EEOC is expressly prohibited from imposing racial quota requirements.

Under the Executive Order there is authority to require an affirmative action plan including the imposition of racial quotas. In my view, the Philadelphia plan is such a quota plan.

These eontradictions place the EEOC in the intolerable situation of being compelled to select between eontradietory expressions of Congressional intent. It is unreasonable to ask the EEOC to decide which intention we really mean.

I am particularly concerned that the EEOC may decide that it can, under the Executive Order authority, impose racial quotas which it is forbidden to do under direct Congressional statute. Such artificial quotas, unrelated to competence, are a distortion of civil rights and a disservice to our working people. Personal rights are individual rights, and the imposition of quotas infringes on them.

In our committee eonsideration of the bill, I offered an amendment for the single purpose of removing the contradiction. It would have made the present authority of title VII of the Civil Rights Act take precedence in any confiict situation. The EEOC deserves such guidance.

EDITH GREEN.

INDIVIDUAL VIEWS OF REPRESENTATIVE MAZZOLI

I favor equal employment opportunity for all Americans and support all realistic legislative measures directed toward this goal. However, because of significant provisions contained in, and omitted from, the Committee version of H.R. 1746, I cannot support this legislation in the form in which it has been reported. It requires major amendment in order to become, in my opinion, realistic and appropriate legislation to end job discrimination.

My objections to H.R. 1746 conform generally to the objections raised in the Minority Views printed in this Report.

Basically, I prefer the stability, expedition and protection to plaintiff and defendant alike offered by judicial enforcement of equal employment rights over the administrative cease and desist approach contained in H.R. 1746.

I also prefer that a choice of remedies be incorporated into this legislation. A multiplicity of remedies and of forums, except in pattern and practice suits, is inconsistent with the intent of this legislation which is to consolidate and coordinate all efforts to eliminate discrimination in employment.

There ought also, in my opinion, to be a two-year statute of limitations incorporated into H.R. 1746. I concur with the Minority Views on this matter as set forth elsewhere in this Report.

Likewise, I concur in the conclusion and the reasoning of the minority in opposing the shift of the Office of Federal Contract Compliance to the Equal Employment Opportunities Commission.

On these groups and on others, most of which are discussed in the Minority Views printed in this Report, I cannot support the Committee version of H.R. 1746, and will support amendments or substitutes thereto.

ROMANO L. MAZZOLI.

SUPPLEMENTAL VIEWS OF REPRESENTATIVES JOHN M. ASHBROOK AND EARL F. LANDGREBE

We generally agree with the views expressed in the Minority report. However, we do not conclude as they do that the EEOC should be given enforcement authority.

JOHN M. ASHBROOK.
EARL F. LANDGREBE.

INDIVIDUAL VIEWS OF REPRESENTATIVE REID OF NEW YORK

Since 1965, I have authored, supported, and fought for legislation to strengthen the Equal Employment Opportunity Commission by giving it cease and desist powers. In 1965, such a bill passed the House and in 1970 a similar measure was approved by the Senate. I very much hope that in 1971 both houses of the Congress will agree that the right to equal employment opportunity is dependent upon a strong EEOC with judicially enforceable cease and desist powers.

The Commission's powers under present law are limited to conciliation and it is apparent that this authority is grossly inadequate to obtain meaningful action in the cases before it. Reasonable cause has been found in 63 percent of the 27,000 cases brought before the EEOC and recommended for investigation between 1965 and 1970. But in only less than half of these cases was the Commission able to achieve a totally or even partially successful conciliation.

Based on my experience as Chairman of the New York State Commission for Human Rights in 1961 and 1962, I deeply believe that only cease and desist powers will give the EEOC the strength it needs to be effective. Redress through the courts, instead of cease and desist powers, will not be as effective, will not be as expeditious, and will not result in prompt equal employment opportunity for all Americans.

H.R. 1746 also expands the jurisdiction of EEOC to cover state and local government employees and to cover employers and labor unions with 8 or more employees or members instead of the present 25, and transfers equal employment functions of the Civil Service Commission to the EEOC. These amendments fill a critical need and they will make the protection of a strong Federal law available to government workers in almost 20 states which lack meaningful legislation in this field.

Transfers of authority to the EEOC from the Civil Service Commission, the Department of Labor (in the case of Federal contract compliance) and the Department of Justice (in the case of pattern or practice discrimination suits) will centralize the equal employment functions of the Federal government. Hopefully, this will result in a more vigorous pursuit of these rights than now is the case by certain

of these agencies. In particular, adequate staff and resources must be provided to the EEOC to handle its increased responsibilities. Otherwise, these transfers of authority will have the effect of reduced, rather than strengthened, compliance. This is especially important with regard to the transfer of Federal Contract Compliance pursuant to Executive Order 11246 from the Department of Labor to EEOC.

Equal employment opportunity legislation with effective enforcement is now the law in over 30 states. Support for this bill is nationwide among educational, religious, civic, labor, and civil rights groups. I know of no black, Spanish-American, Chicano, American Indian, or women's organization that does not totally support cease and desist powers. Indeed, the most persistent opposition to cease and desist comes from those who do not really want the Federal government to enforce effectively the right of all Americans to equal employment opportunity now.

The plain hard fact of the matter is that we should have enacted this bill in 1965, instead of wasting six years conjuring up legal niceties to evade our constitutional responsibilities. To delay still longer the enactment of cease and desist powers for the EEOC would be a grave dereliction of duty by the Congress. To dilute this legislation by the substitution of authority weaker and less effective than cease and desist would be a callous and empty gesture and a cynical failure to fulfill a right due all Americans regardless of color or sex.

Finally, I hope that the Rules Committee, unlike its past performance, will grant a rule for H.R. 1746 promptly so that Members will have a chance to debate and vote on the bill. Amendments will doubtless be offered on the Floor to weaken this legislation, and I hope that all Members will join in defeating them. Justice demands nothing less.

OGDEN R. REID.

O

FILE

SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

UNCLASSIFIED	CONFIDENTIAL	SECRET

25X1A

OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	OLC [redacted]		
2			
3			
4			
5			
6			

	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

As mentioned to you - Rosen cannot object to Senate version which codifies Exec. Order. All the House version varies from Exec. Order - he also has no objection to it. CSC willing accept either on a compromise.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
	18 NOV 1971

UNCLASSIFIED	CONFIDENTIAL	SECRET

Form No. 237 Use previous editions

1-67